85-614

Supreme Court, U.S.
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IN THE SUPREME COURT
OF THE UNITED STATES
OCTOBER TERM, 1985

NO.

GRANVILLE B. TAYLOR, JR.,
PETITIONER

VS.

LOCAL 980, UAW (UNITED
AUTOMOBILE, AEROSPACE
& AGRICULTURE IMPLEMENT
WORKERS OF AMERICA),
RESPONDENT

PETITION FOR A WRIT OF CERTIORIARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Questions Presented

I. In a suit by an employee against his union alleging breach of its duty of fair representation for failure to confirm an arbitration award, should the statute of limitations be longer than when the employee seeks to vacate an arbitration award?

II. In a suit by an employee against his union alleging breach of its duty of fair representation, is the employee required to take an intra-union appeal in order to exhaust his internal union remedies?

III. Even if the six month statute of limitations set forth in Del Costello v. International Brotherhood of Teamsters, 462 U.S. 151, 103 S.Ct. 2281, 76 L.Ed. 2d 476 (1983), applies to the instant case, should this decision be applied retroactively?

Statutory Provision Involved

Section 30(a) of the Labor Management Relations Act of 1947, 29 U.S.C. §185(a):

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter . . . may be brought in any district court of the United States having jurisdiction of the parties, without regard to the amount in controversy or without regard to the citizenship of the parties.

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Questions Presented

I. In a suit by an employee against his union alleging breach of its duty of fair representation for failure to confirm an arbitration award, should the statute of limitations be longer than when the employee seeks to vacate an arbitration award?

II. In a suit by an employee against his union alleging breach of its duty of fair representation, is the employee required to take an intra-union appeal in order to exhaust his internal union remedies?

III. Even if the six month statute of limitations set forth in Del Costello v. International Brotherhood of Teamsters, 462 U.S. 151, 103 S.Ct. 2281, 76 L.Ed. 2d 476 (1983), applies to the instant case, should this decision be applied retroactively?

Opinions Below

The opinion of the United States Court of Appeals for the Third Circuit, filed May 9, 1985, affirming the judgment of the District Court, is reported at 761 F.2d 931. It is reproduced in Appendix A.

The opinion of the United States District Court for the District of New Jersey, Hon. Harold A. Ackerman, U.S.D.J., April 24, 1984, denying plaintiff's motion for reconsideration, was not published. It is reproduced in Appendix B.

The oral, unpublished opinion of Judge Ackerman, rendered on January 23, 1984, granting defendant's motion for summary judgment, is reproduced in Appendix C.

The opinion of the United States Court of Appeals for the Third Circuit, filed March 30, 1983, vacating the order

to the District Court and remanding, is reported at 703 F. 2d 738. It is reproduced in Appendix E.

The oral, unpublished opinion of Judge Ackerman, rendered March 1, 1982, granting defendant's motion for summary judgment, is reproduced in Appendix F.

Jurisdiction

The judgment of the Court of Appeals for the Third Circuit was entered on May 9, 1985. A timely petition for rehearing en banc was denied on June 11, 1985. This petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

Statement of the Case

Jurisdiction in the United States District Court was invoked under §301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. §185(a). An individual employee may bring an action against his union for violating its duty of fair representation under Vaca v. Sipes, 386 U.S. 171, 87 S.Ct. 903, 17 L.Ed. 2d 842 (1967).

Petitioner Granville Taylor was employed by Ford Motor Co. as a pumpman; he was laid off March 11, 1969.* Respondent U.A.W. was his certified

*Ford Motor Co. was originally a defendant in this action. Summary judgment was granted to Ford on June 26, 1981, on statute of limitations grounds under United Parcel Service v. Mitchell, 451 U.S. 56, 101 S.Ct. 1559, 67 L.Ed. 2d 732 (1981).

collective bargaining representative of a bargaining unit which included the pumpman classification. Under the collective bargaining agreement in effect at the time (Article VIII §18), petitioner should have been but was not notified of and given an opportunity to accept a vacancy in the pumpman classification in May 1973. Petitioner should have had an opportunity to accept the vacant position. However, another employee filled this vacancy as of May 29, 1973, by way of a promotional posting. (Appendix G, Complaint at 1-3)

In May 1976, petitioner wrote to the company questioning his employment status. The company determined that he should be reinstated to his former position, and he was as of June 1976. (Appendix G, Complaint at 3)

Respondent union filed a grievance on petitioner's behalf in June 1976, alleging

a violation of his recall rights under the collective bargaining agreement. The grievance was submitted to arbitration, and on August 8, 1978, Umpire Paul D. Hanlon denied the request for back pay (under the provisions of the collective bargaining agreement) but awarded petitioner his pension rights and benefits:

> During the Umpire hearing, the Company agreed that the aggrieved should be credited with pension rights and benefits for the period from May 29, 1973, to date of reinstatement and based upon that agreement, the Umpire orders that this be done. (Appendix G, Exhibit C to Complaint)

In September 1978 petitioner requested the full amount of the benefits awarded to him, as well as his pension credits. The company advised petitioner that there was no provision in the Umpire's decision for a monetary award, and that the issue of his pension credits

had been submitted to the U.A.W./Ford Retirement Board. (Appendix G, Complaint at 5)

On September 29, 1978 the then attorney for the petitioner requested that respondent local union take all necessary action to clarify the Umpire's decision with regard to "pension rights and benefits." On November 21, 1978 petitioner's attorney requested the president of the respondent Local 980 to utilize whatever internal union procedures were available to protect petitioner's rights. Neither the President of the Local nor anyone else in the Local ever responded. (Appendix G, Complaint at 5-6)

On November 30, 1978 an International representative of respondent advised petitioner that he was not entitled to holiday and vacation pay and that the U.A.W./Ford Retirement Board had denied

him pension credits notwithstanding the Umpire's decision. (Appendix G, Complaint at 5-6)

Apparently, some correspondence of petitioner's attorney was referred to the office of the President of the International U.A.W. On December 4, 1978, William Beckham, an administrative assistant to the President of the International, wrote to petitioner:

> In the instant case we note that you refer to the complaint as having been decided by an arbitrator which, if true, means that the case has been processed by the Union up to and including arbitration which is the last resort step for the resolvement of complaints under the Collective Bargaining Agreement.
>
> You may, therefore, advise Mr. Taylor if you are representing him that the Union has gone its last mile, and there would be no further action that could be taken on the matter within the Union. (emphasis added) (Appendix H)

Mr. Beckham was obviously unfamiliar with the matter. He did not know that it

was true that petitioner's grievance had gone to arbitration and that petitioner was seeking implementation of the award. Rather, it seems that Mr. Beckham assumed that if there had been an arbitration, it was unfavorable to petitioner; otherwise, there would be no need for further action. Of course, arbitration is "the last resort step for the resolvement of complaints under the Collective Bargaining Agreement"; since arbitration is final and binding, it is "the last mile" that the union goes for an employee--assuming the arbitration is lost. On the other hand, if the arbitration is won, it is equally as clear that the prevailing party is entitled to its implementation. After all, arbitration is supposed to be final and binding. Mr. Beckham was clearly not aware that the situation was the latter.

In a good faith attempt to submit all the facts of his case to his union hierarchy so that an honest, informed decision would be made, petitioner through his attorney filed a formal appeal with the Public Review Board of the International U.A.W. (PRB), in January 1978. A notification of Public Appeal was issued, and the International Union was granted an extension of time to file its positional statement and finally did so, six weeks beyond the extension on April 19, 1979. The International felt that "this is really not an appropriate case before the Board." In June 1979, the PRB remanded the appeal to the International Executive Board. (Appendix G, Complaint at 6-8)

While the remand was pending, in 1980, the International Union took over the administration of respondent Local

980. A memo to members in June 1980 explained the reason for the takeover: Rights of union members were being denied. The memo cited as a specific example seniority members on layoff who were denied their right to work. (Appendix G, Exhibit H to Complaint) Petitioner thus had every reason to believe that the International would protect his rights.

On October 20, 1980, the President of the International Union, UAW denied petitioner's appeal. (Appendix G, Exhibit G to Complaint)

One month thereafter, on November 19, 1980, petitioner filed the complaint in the instant case.

Reasons for Granting the Petition

I. In a suit by an employee against his union alleging breach of its duty of fair representation for failure to confirm an arbitration award, the statute of limitations should be longer than when the employee seeks to vacate an arbitration award.

Del Costello v. International Brotherhood of Teamsters, 462 U.S. 151, 103 S.Ct. 2281, 76 L.Ed 2d 476 (1983), applied the six month statute of limitations set forth in §10(b) of the Labor Management Relations Act, 29 U.S.C, §160(b), for unfair labor practices before the National Labor Relations Board, to suits brought by individual employees against their unions for unfair representation by mishandling the grievance and arbitration procedure. In Del Costello, both of the arbitration awards in question were in favor of the

employers. The individual employee--plaintiffs alleged that their unions mishandled the presentation of their grievances. The results were adverse arbitration awards.

In the instant case, the majority opinion of the Third Circuit states that "Del Costello draws no explicit distinction between employee actions seeking vacation of arbitral decisions and those seeking enforcement." 761 F.2d at 933 (Appendix A, Slip opinion at 5). This is the basis for the Third Circuit's refusal to distinguish between actions in which the employee seeks to enforce a favorable arbitration award and actions in which the employee seeks to vacate an allegedly mishandled arbitration award. It is respectfully submitted that this Court in Del Costello did not make this distinction because the issue simply was

not before the Court at the time. None of the employee plaintiffs in Del Costello were seeking enforcement of arbitration awards; thus, there was no reason or need for the Court to make any distinction between enforcement and vacation of arbitration awards. Yet the Third Circuit has attached controlling significance to the absence of an "explicit distinction".

It is submitted that the Third Circuit has extended the ruling of Del Costello more broadly than the Court intended. The policy considerations underlying the Del Costello decision were the furthering of the private settlement of disputes under collective bargaining agreements, the application of a uniform federal standard, and the protection of the rights of the "unsophisticated" employee, who is represented by his union rather than independent counsel.

Del Costello, supra, 103 S.Ct. at 2291. These same policy considerations call for a longer limitations period when an employee is seeking to confirm an arbitration award. The very reason why the Del Costello Court rejected the state statute of limitations for vacation of arbitration awards was because it was too short; it

> fail[ed] to provide an aggrieved employee with a satisfactory opportunity to vindicate his rights under §301 and the fair representation doctrine. 103 S.Ct. at 2291.

The Court emphasized that this decision was limited:

> We stress that our holding today should not be taken as a departure from prior practice in borrowing limitations periods for federal causes of action, in labor law or elsewhere. 103 S.Ct. at 2294.

Thus, the Court in Adams v. Gould, 739 F. 2d 858 (3rd Cir. 1984), cert. den. _____ U.S. _____, 105 S.Ct. 806 (1985),

declined to apply the statute of limitations set forth in Del Costello, in an action by individual employees alleging that their employer breached the collective bargaining agreement and their union breached its duty of fair representation. Underfunding of the company's pension plan was at issue, and after arbitration the union and the company entered into a settlement which was unfavorable to plaintiffs. If the six month limitations period of Del Costello had applied, the suit, which was brought 16 months after the settlement, would have been time-barred. After a detailed analysis of the policy issues underlying the Del Costello decision, the Court decided to apply the three year statute of limitations set forth in the Employee Retirement Income Security Act, 29 U.S.C. §1113(a)(2).

A Vaca v. Sipes [386 U.S. 171, 87 S.Ct. 903, 17 L.Ed. 2d 842 (1967)] suit mormally involves an issue that is intertwined with the day-to-day relationship between management and labor. Speed and finality in the resolution of disputes are the most relevant policies in those situations. In pension disputes, however, that policy is less relevant. . . .

The immediate effect of the dispute on the day-to-day labor-management relationships is slight. The funding issue involves the immediate interests only of retirees currently receiving benefits. In many cases, as here, the funding may be adequate to pay the present beneficiaries. The long-term interests of current employees are at stake, but delay in resolving disputes concerning those interests does not disrupt labor-management relations. Nor does the delay itself prejudice the interests of the employees. . . .

Our reading of Del Costello is that it does not preclude the use of a different federal statutory period where the policies underlying the adoption of a six-month period in that case are inapplicable. We believe that this is such a case. The primary holding of Del Costello is that, in Vaca v. Sipes suits, a uniform federal standard, rather than a "borrowed" state limitations period, is appropriate. The application of the six-month period

> provided by section 10(b) was based on the assumption that Vaca v. Sipes suits would involve issues relevant to day-to-day labor-management relations. We believe that there is a distinction between the implication of delay in resolving disputes over pension contribution issues and the implications of delay in resolving disputes over terms of a collective bargaining agreement that affect the day-to-day operations of a business. We also believe that this distinction justifies the use of a different limitations period. 739 F. 2d at 867.

All of these policy considerations are present in the instant case, which also involves a pension dispute. The issue is not "intertwined with the day-to-day relationship between management and labor." There is no disruption of industrial relations. Plaintiff Granville Taylor is presently, peacefully, employed at Ford Motor Co., and has been since his recall in 1976. The issue here is merely the pension credits and benefits to which Mr. Taylor is entitled under the

arbitration award. Under these circumstances there is simply no reason for a short six month statute of limitations that excludes his claim.

Notwithstanding the decision of the Third Circuit in the instant case, the distinction between actions to vacate and actions to confirm arbitration awards is widely recognized. The First and Fifth Circuits have declined to apply the short six month statute of limitations of Del Costello, when the plaintiff was a union seeking to confirm an arbitration award. Derwin v. General Dynamics Corp., 719 F. 2d 484 (1st Cir. 1983), and Electrical Workers v. Ingram Mfg. Co., 715 F. 2nd 886 (5th Cir. 1983), cert. den., _____ U.S. _____, 104 S.Ct. 1711 (1984). The Third Circuit in the instant case distinguished these two cases on the grounds that they were "straight, non-hybrid, section 301

actions" 761 F. 2nd at 933 (n.2) (Appendix A, Slip Opinion at 5). However, it is submitted that the "family resemblance," Del Costello, supra, 103 S.Ct. at 2293, between actions to enforce arbitration awards by unions and individuals is stronger than any "family resemblance" between actions by individuals to vacate and enforce arbitration awards. Thus, regarding actions to enforce arbitration awards under §301(a) of the Labor Management Relations Act, there is a conflict between the decisions of the First and Fifth Circuits in Derwin and Ingram, supra, and the decison of the Third Circuit in the instant case.

In Derwin v. General Dynamics Corp., supra, 719 F. 2d 484 (1st Cir. 1983), the Court felt that the Del Costello decision "was not intended to weaken the ordinary presumption of state law primacy in

resolving section 301 limitations questions." Id. at 487. Massachusetts Gen. Laws Ch. 150 C, §10, required that actions to vacate or modify an arbitration award be filed within thirty days. The Court in Derwin said:

> This provision virtually eliminates any prospect of a successful challenge to an award after the passage of the 30-day period, and, by the same token, encourages the parties voluntarily to treat the award as final and binding, foregoing judicial proceedings altogether. This tendency of section 10 to encourage private settlement would, if anything, be undermined if it contained a strict limitations period for actions to confirm. If the prevailing party failed to obtain a confirmatory decree within the limitations period, the award would become unenforceable. This prospect would force the prevailing party to undergo the expense and delay of suing to confirm the award, even where the other party had agreed in good faith that the award was final and binding.
>
> Viewed as an integral part of the statutory scheme, therefore, section 10 operates to cut off the stale defenses and to encourage the parties to forego merely formal judicial

> proceedings aimed at obtaining confirmatory orders. Such a statutory scheme is fully consistent with the federal policy of according finality to labor awards. [Citation omitted.] Since a relatively lengthy period for actions to confirm does not threaten the finality of arbitral awards, we see no basis for departing from the ordinary presumption favoring the application of state statutes of limitations to actions arising under section 301.
> 719 F. 2d at 489-490.

In Electrical Workers v. Ingram Mfg. Co., 715 F. 2d 886 (5th Cir. 1983), cert. den. _____ U.S. _____, 104 S.Ct. 1711 (1984), another suit by a union to enforce an arbitration award, the Court again declined to apply Del Costello in favor of a considerably longer limitations period: "Instead, in this case the general catch-all Texas limitations period of four years is applicable." Id. at 890.

Similarly in New Jersey, the Courts have applied a longer statute of limitations for actions to confirm arbitration

awards than for actions to vacate arbitration awards. Taylor I, 703 F.2d 738 (3d Cir. 1983); Heffner v. Jacobson, 185 N.J. Super. 524 (Ch. Div. 1982), aff'd 192 N.J. Super. 299 (App. Div. 1983), certif. granted 97 N.J. 628 (1984). N.J.S.A. 2A: 24-7 permits commencement of "a summary action for confirmation of the award or for its vacation, modification or correction" only within three months. Nevertheless, the courts have held that this limitation applies to summary actions, and actions for confirmation will be allowed beyond the three months:

> If, however, the prevailing party in the arbitration proceeding delays beyond the three-month statutory period to move for confirmation of the award, the policy favoring arbitration is not frustrated, nor is the losing party injured, barring any claim of laches which might be raised.
>
> . . . .

> . . . . in most cases only the rights of the dilatory prevailing party will be affected in applying to the Court for confirmation . . . .
> 185 N.J. Super. at 527-528

As the Court in Derwin, supra, said, a lengthy statute of limitations in which to confirm an arbitration award in no way threatens the finality of the award. Rather, it encourages the private settlement of disputes. Although six months might be an adequate time in which to commence an action to confirm many arbitration awards, there is simply no reason to exclude those who need more than six months to commence their actions to confirm. The result would be unnecessary litigation when prevailing parties, still uncertain that their awards will be obeyed as six months draw to a close, commence actions to confirm. On the other hand, a larger limitations period would in no way

prejudice the defendant to whom the arbitration award is unfavorable.

There appears to be just one Circuit in which Del Costello has been applied in an action to enforce an arbitration award. Samples v. Ryder Truck Lines, 755 F. 2d 881 (11th Cir. 1985). The Court in Samples gave no consideration to the reasons underlying the Del Costello decision; it was mechanically applied. 755 F. 2d at 887.*

* However, the Court in Samples held that "the employee's cause of action accrues at the latest when his union's time for asserting the claim itself has run out." Id. at 887. The Court applied the six months limitations period of §10(b) to the union's action to confirm only because "state law affords no reasonably applicable rule." Id. at 888.

Under Derwin, supra, and Ingram, supra, state law did afford a reasonably applicable rule and provided a direct analogy, and thus was applied to unions' actions to enforce arbitration awards. In the instant case, there is also a direct analogy to state law, the six year statute of limitations period for contractual

In any event, the distinction between actions to vacate and confirm arbitration awards should be made. As the dissent by Judge Higginbotham in the instant case said:

> Stable bargaining relationships require, among other things, that all parties abide by arbitration awards. [Citation omitted.] Thus, actions to enforce stand on a very different footing from actions to vacate. The finality of private settlements, which is undermined by actions at law to vacate, is actually promoted by the availability of actions to compel compliance. Indeed, achieving "finality" is a preeminent goal of all arbitration--whether commercial, labor, or any other--and in all of these contexts actions to enforce have been accorded more dignity, in the form of longer limitations

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*(Footnote continued from previous page.) claims, N.J.S.A. 2A:14-1. Taylor I, supra. Applying this limitations period, the respondent union in the instant case would have had until August 1984, six years after the arbitration award, to seek enforcement. Under Samples, supra, petitioner's claim did not accrue until August 1984, and thus was clearly in time.

> periods, than actions to vacate. [Citations omitted.] Thus, the "analogy" between actions to enforce commercial arbitration awards and actions to enforce labor arbitration awards is much stronger than the analogy between actions to vacate. Further, I believe that in the context of enforcing arbitration awards, the national interests in stable bargaining relationships and the finality of private settlements override the interests in "expeditious dispute resolution in the labor arena and . . . uniform procedural treatment of similar claims" that the majority emphasizes. 761 F. 2d at 936 (Appendix A, Slip Opinion at 11).

In conclusion, the statute of limitations should be longer in an action by an employee against his union alleging breach of duty of fair representation for failure to confirm an arbitration award, than in such an action seeking vacation of an arbitration award.

II. In a suit by an employee against his union alleging breach of its duty of fair representation, the employee is required to take an intra-union appeal in order to exhaust his internal union remedies.

In Clayton v. Automobile Workers, 457 U.S. 679, 101 S.Ct. 2088, 68 L.Ed. 2d 538 (1981), the Court required exhaustion of internal union appeals when the appeals procedure can "result in reactivation of the employee's grievance or an award of the complete relief sought in his §301 suit." 101 S.Ct. at 2093. In the instant case, petitioner seeks basically the implementation of his arbitration award. This could and should have been achieved by a successful intra-union appeal; respondent union could and should have filed an action for confirmation of the award.

Besides the adequacy of intra-union procedures to grant full relief, the Court

in Clayton set forth two other factors to be considered in determining whether exhaustion should be required:

> whether union officials are so hostile to the employee that he could not hope to obtain a fair hearing on his claim; . . . whether exhaustion of internal procedures would unreasonably delay the employee's opportunity to obtain a judicial hearing on the merits of his claim. 101 S.Ct at 2095.

In the instant case, there was no evidence of hostility on the part of union officials. The December 4, 1978 "last mile" letter, which the District Court and the Third Circuit held was the date of the accrual of the petitioners cause of action, was neither hostile nor "an unequivocal refusal," 761 F.2d at 934 (Appendix A, Slip Opinion at 6); it was simply ignorant. Neither the District Court nor the Third Circuit, holding that the date of this letter was the date on which petitioner's cause of action

accrued, considered the letter in its entirety. Nor did they acknowledge that the letter was from an assistant in the International to whom no inquiry had been addressed. Rather, petitioner addressed his inquiry to the Local, which never responded (Appendix G, Complaint at 5-6).

The District Court erroneously stated that in this December 4, 1978 letter, the assistant, Mr. Beckham "told him [petitioner's counsel] unequivocally that the Pension Board had denied retroactive pension credits. . . ." (Appendix F at 10, lines 20-21). The District Court concluded: "At this point it was clear . . . that the Union was not going to do anything about it" (Id. at 10, lines 22-25). The Third Circuit adopted this conclusion without any discussion or analysis. 761 F.2d at 934 (Appendix A, Slip opinion at 6-7). What was clear at

this point was that petitioner had a legal obligation to invoke his formal, internal union appeal. The unequivocal refusal of the Union came with the denial of the appeal in October 1980 (Appendix G, Exhibit G to the Complaint), one month before petitioner filed suit.

As to unreasonable delay, petitioner did not know at the time and certainly had no way of knowing that such delay would occur. He attempted to exhaust his intra-union remedies in good faith.

The Circuit Courts of Appeals have not hesitated to require such exhaustion. For example, in Miller v. General Motors Corp., 675 F.2d 146 (7th Cir. 1982), the Chairman of the local's Shop Committee, one Mapes, withdrew the plaintiff's grievance because he felt it lacked merit. He then advised plaintiff

> that he could appeal the withdrawal using internal union appeal procedures, and could succeed in having the grievance reinstated, but that if reinstatement of the grievance occurred, Mapes would again withdraw it. Miller [plaintiff] then contacted two higher-ranking union officials who corroborated Mapes' authority to do as he had said. 675 F.2d at 147.

Plaintiff Miller then filed his suit. This language is as strong as the "last mile" letter in the instant case. Nevertheless, the Court required exhaustion; plaintiff "had a duty to know his union appeal rights." Id. at 150.

> The speculations of union officials, particularly when they are not principals in the appeals process, cannot excuse an employee from an obligation to proceed in accordance with the formal procedures. In the face of such elaborate, detailed and well-documented procedures as those developed by the UAW and set forth in its Constitution, we do not believe any employee's reliance on such representations should be viewed as reasonable. Id. at 150.

In the instant case, the very same elaborate, detailed and well-documented

procedures of the UAW are in question. Petitioner Taylor was reasonable in his refusal to rely on the "last mile" speculations of a union official who was not a principal in the appeals process.

Similarly in Monroe v. U.A.W., 723 F.2d 22 (6th Cir. 1983), the Court required exhaustion of formal union appeals procedures, although the plaintiff had made some attempts to obtain relief.

> Where the union member is fully advised of appeal procedures and the union constitution mandates that they be exhausted and where those procedures give full relief as defined in Clayton, we hold that the balance falls in favor of requiring exhaustion. In the absence of knowledge to the contrary, a reasonable person expects that the appeal procedures would bring results: else why would they be provided and required? 723 F.2d at 25-26.

In the instant case, petitioner reasonably expected that the appeals procedure would bring results. He had no knowledge to the

contrary, and there was no reason for him to have any knowledge to the contrary. In fact, the June 1980 International take over memo (Appendix G, Exhibit H to Complaint) encouraged him, leading him to believe that the International would vindicate his rights.

In Scott v. Local 863, International Brotherhood of Teamsters, 725 F.2d 226 (3d Cir. 1984), plaintiffs were laid-off employees who alleged that defendent, their union, breached its duty of fair representation by failing to process their grievances to arbitration. As in the instant case, the plaintiffs in Scott attempted unsuccessfully to take an intra-union appeal. Applying Del Costello to increase the limitations period, the Court remanded for a determination of when the cause of action accrued, "when the futility of further union appeals became

apparent or should have become apparent . . ." 725 F. 2d at 229. Since this issue was not decided by the District Court and was not argued on appeal, the Court specifically declined "to define the precise criteria by which a district court is to make such determinations. . ." Id. at 229 n.2. However, a concurrence is most applicable to the instant case.

> I fear that the majority has established a novel and inadequately confined precedent that will in a Vaca v. Sipes-type suit, enable a union defendant to assert the futility of exhausting its own internal remedies as a trigger for the running of the short (6 months) Del Costello statute of limitations and thereby unfairly trap unwary suitors. This concern is not academic; rather, it responds to a troublesome dilemma frequently faced by litigants in this circuit.
>
> * * * *
>
> The problem is that, unlike other situations where the twin defenses of failure to exhaust and the statute of limitations combine to give the litigant a narrow window in which to file suit,* here there is no

> guarantee that statutes, regulations, or other forms of clear, written notice will exist that warn the plaintiff of his peril. On the contrary, precisely because the majority here has allowed it to benefit them in litigation, union officials may well be equivocal or contradictory in their communications to dissatisfied members and may send such communications through persons within the internal union hierarchy whose authority to bind the union is at best hazy. As a result, the potential suitor will not know when exhaustion is futile. (emphasis added) 725 F. 2d at 230.
>
> But if, in reliance on what he thought were genuine internal remedies, he refrains from suing for as much as six months, and it is ultimately determined that these remedies were illusory, his suit will be forever barred. 725 F. 2d at 231.

This is precisely what has happened in the instant case. It is submitted that

*In the instant case, "statute of limitations" and "failure to exhaust internal union remedies" were set forth as affirmative defenses in respondent's answer.

the authority of William Beckham, an administrative assistant, to bind the U.A.W., in his December 4, 1980 "last mile" letter--local or international--was "at best hazy." Moreover, the letter itself was equivocal, showing ignorance of petitioner's situation. Petitioner Granville Taylor did not know that exhaustion would be futile and relied in good faith or what he thought were genuine internal remedies, as he was required to do under Miller v. General Motors Corp., supra, 675 F. 2d 146 (7th Cir. 1982) and Monroe v. U.A.W., supra. 723 F. 2d 22 (6th Cir. 1983). He ascertained too late that these remedies were illusory, and his suit is now forever barred.

As the dissent in the instant case described the situation:

> The employee's dilemma is well-illustrated by the present case. Even assuming that the majority is

> correct in holding that appellant's claim accrued when he received the letter from the Local president stating that the union would go no further, it is apparent that he continued to pursue internal appeals in good faith. There is evidence of record to indicate that appellant could reasonably have believed that the International might take a different view of the matter. This suit was filed shortly after it became apparent that the International would not intercede. The longer limitations period afforded by state law would mitigate the consequences of erroneously relying--as did the appellant--on the union's continued efforts, by opening the section 301/unfair representation "window" somewhat wider. The window should not be precipitously closed on employees who having won the first battle side-by-side with their union--and often without the aid of independent counsel--fail to appreciate that their union has suddenly deserted them. 761 F. 2d at 935-936 (Appendix A, Slip Opinion at 10).

In conclusion, since petitioner attempted in good faith to exhaust his internal union remedies, as required, he should not now be foreclosed by a short statute of limitations.

III. Even if the six month statute of limitations set forth in Del Costello v. International Brotherhood of Teamsters, 462 U.S. 151, 103 S.Ct. 2281, 76 L.Ed. 2d 476 (1983), applies to the instant case, this decision should be applied prospectively.

The issue of the retroactivity of Del Costello has been a source of conflict among the Circuits. It has been applied retroactively in, e.g., Welyczko v. U.S. Air, Inc., 733 F. 2d 239, (2d Cir. 1984), cert. den. _____ U.S. _____, 105 S.Ct. 512 (1984); Scott v. Local 863, International Brotherhood of Teamsters, supra, 725 F. 2d 226 (3rd Cir. 1984); Perez v. Dana Corporations, 718 F. 2d 581 (3rd Cir. 1983); Del Costello v. Teamsters Local 557, _____ F. 2d _____, 119 L.R.R.M. 2697 (4th Cir. 1985); Sine v. Local No. 992 International Brotherhood of Teamsters, 730 F. 2d 964 (4th Cir. 1984); Murray v. Branch Motor Express Company,

723 F. 2d 1146 (4th Cir. 1983), cert. den. _____ U.S. _____, 105 S.Ct. 292 (1984); Edward v. Sea-Land Service, Inc., 720 F. 2d 857 (5th Cir. 1983); Smith v. General Motors Corp., 747 F. 2d 372 (6th Cir. 1984); Ernst v. Indiana Bell Telephone Company, Inc., 717 F. 2d 1036 (7th Cir. 1984), cert. den. _____ U.S. _____, 104 S.Ct. 707 (1984); Storck v. International Brotherhood of Teamsters, 712 F. 2d 1194 (7th Cir. 1983); Samples v. Ryder Truck Lines, Inc., supra, 755 F. 2d 881 (11th Cir. 1985); and Hand v. International Chemical Workers Union, 712 F. 2d 1350 (11th Cir. 1983).

On the other hand, some decisions have not applied Del Costello retroactively, for example, Byrne v. Buffalo Creek R.R., _____ F. 2d _____, 119 L.R.R.M. 3029 (2d Cir. 1985); Triplett v. BRAC Local 308, _____ F. 2d _____, 119

L.R.R.M. 2903 (4th Cir. 1985); Zemonick v. Consolidated Coal Co., ____ F. 2d ____, 119 L.R.R.M. 2607 (4th Cir. 1985); Andres v. Local 600, International Brotherhood of Teamsters, 724 F. 2d 73 (8th Cir. 1983); Askew v. F&W Express, Inc., 723 F. 2d 624 (8th Cir. 1983), cert. den. _____ U.S. _____, 105 S.Ct. 292 (1984), reh. den. _____ U.S. _____, 105 S.Ct. 577 (1985); Arrow v. Pulitzer Publishing Co., 723 F. 2d 622 (8th Cir. 1983); Barina v. Gulf Trading & Transportation Co., 726 F. 2d 560 (9th Cir. 1984); McNaughton v. Dillingham Corp., 722 F. 2d 1459 (9th Cir. 1984), cert. den. _____ U.S. _____, 105 S.Ct. 291 (1984); and Edwards v. IBT Local 36, 719 F. 2d 1036 (9th Cir. 1983), cert. den. _____ U.S. _____, 104 S.Ct. 1599 (1984).

In Chevron Oil Company v. Huson, 404 U.S. 97, 92 S.Ct. 349, 30 L.Ed. 2d 296

(1971), this Court set forth the factors to consider in determining retroactivity: First, whether the decision in question has established "a new principle of law"; second, whether "retrospective operation will further or retard" the purpose and effect of the rule in question; and third, whether retroactive application would impose substantial inequity. 404 U.S. at 106-107; 92 S.Ct. at 355.

It is submitted that the decisions that have held Del Costello non-retroactive give a well reasoned, thoughtful analysis of these criteria. In Barina v. Gulf Trading and Transportation Co., supra, for example, the state statute of limitations in effect when plaintiff's cause of action accrued was four years. Setting forth the criteria of Chevron Oil Co. v. Huson, supra, the Court in Barina said:

> The first and third factors militate against retroactivity here. Del Costello establishes a new principle of law because it imposes a limitation on the employee that is eight times shorter than the limitation that applied when the claim arose. Moreover, Del Costello deviated from the Supreme Court's prior direction in UAW v. Hoosier Cardinal Corp., 383 U.S. 696, 704-05, 86 S.Ct. 1107, 1112-1113, 16 L.Ed. 2d 192 (1966), that the applicable statute of limitations be drawn from state law. [Citations omitted.] As for the third factor, "it would . . . produce the most 'substantial inequitable results' to hold that the respondent 'slept on his rights' at a time when he could not have known the time limitation that the law imposed on him." Chevron Oil, 404 U.S. at 108, 92 S.Ct. at 356 (quoting Cipriano v. City of Houma, 395 U.S. 701, 706, 89 S.Ct. 1897, 1900, 23 L.Ed. 2d 647 (1969). 726 F.2d at 563-564.

Again, in Edwards, supra, the Court said: "Retroactive application of a shorter statute of limitations than that pertaining when the case was filed is inherently unfair." 719 F. 2d at 1040.

In Zemonick v. Consolidated Coal Co., Inc., supra, the Court felt that the Del

Costello policies of uniformity and relatively quick resolution of labor disputes, while simultaneously allowing sufficient time for employees to obtain counsel and file suit, would not be furthered by retroactive application of Del Costello in that case. In Zemonick, as in Barina, supra, Edwards v. Teamsters, supra, and the instant case, application of Del Costello would have barred plaintiff's suit. The Court continued:

> Equally strong or stronger, however, is . . . . the federal policy exemplified by Del Costello itself, that aggrieved employees should have a fair opportunity to file their Vaca-Hines complaints. 119 L.R.R.M. at 2611.

Similarly in the instant case, Del Costello has established a new principle of law, Taylor I, supra, 703 F. 2d 738 (3rd Cir. 1983). Prospective application will further the policy that aggrieved employees have an opportunity to file

their suits. Finally, retroactive application of a shorter statute of limitations is inherently unfair, especially in the instant case where petitioner was exhausting his internal union remedies.

In conclusion, Del Costello should not be applied retroactively in this case.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

By _____
Stephen E. Klausner

DATE: _____

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 84-5338

GRANVILLE B. TAYLOR, JR.

Appellant

vs.

FORD MOTOR COMPANY, and LOCAL UNION 980, UAW (UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURE IMPLEMENT WORKERS OF AMERICA)

Appeal From the United States
District Court For the
District of New Jersey - Newark
D.C. Civil No. 80-3774

Argued January 17, 1985

Before: HUNTER, HIGGINBOTHAM,
Circuit Judges, and
KELLY,* *District Judge*

Opinion filed May 9, 1985

Stephen E. Klausner (Argued)
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*Honorable James McGirr Kelly, United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

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Attorneys for Appellee, UAW Local 980

OPINION OF THE COURT

HUNTER, *Circuit Judge:*

1. The principal question raised by this appeal is whether the six-month limitations period of section 10(b) of the National Labor Relations Act ("NLRA"), 29 U.S.C. § 160(b) (1982), applies to a hybrid duty of fair representation-breach of contract action under section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, where the plaintiff-employee is seeking to enforce, rather than vacate, an arbitrator's decision. We construe the Supreme Court's decision in *DelCostello v. International Brotherhood of Teamsters*, 103 S. Ct. 2281 (1983), as mandating application of the six-month limitations period to all section 301 actions that are predicated upon a union's breach of its duty of fair representation, and implicate no countervailing federal policy. We will therefore affirm the district court's order of summary judgment

in favor of United Auto Workers Local 980[1] and against appellant Granville Taylor in his section 301 action.

I

2. In 1969, Ford Motor Company laid Taylor off from his position as a pumpman, and did not recall him until May, 1976. One month later, an arbitrator determined that Ford had breached its collective bargaining agreement with Local 980 by failing to notify Taylor of a vacancy that had occurred in his job classification in 1973, and by failing to recall him at that time. The arbitrator awarded Taylor pension rights and benefits from May 1973. When the UAW/Ford Retirement Board denied Taylor these retroactive pension credits, he sought the assistance of Local 980 in enforcing the arbitrator's award. However, on December 4, 1978, the president of the Local wrote Taylor that the union would take "no further action" in the matter. *See Taylor v. Ford Motor Co. ("Taylor I")*, 703 F.2d 738, 740-41 (3d Cir. 1983).

3. In 1980, Taylor brought his section 301 suit against Ford and Local 980 in the United States District Court for the District of New Jersey. The district court dismissed Taylor's action against Ford on the ground that it was time-barred by New Jersey's 90-day limitation period for confirmation of an arbitral award. On the same ground, the district court subsequently granted summary judgment in favor of Local 980. In March 1983, on appeal from this latter determination, this court determined that New Jersey's six-year statute of limitations for contract actions applied to Taylor's suit, heeding the Supreme Court's directive in *AFL-CIO v. Hoosier Cardinal Corp.*, 383 U.S. 696 (1966), that courts in section 301

1. The co-defendant, Ford Motor Company, has not been a participant in the case since it obtained summary judgment in 1981. *See Taylor v. Ford Motor Co.*, 703 F.2d 738, 741 (1983).

actions are to apply the most analogous state statute of limitations. *See Taylor I*, 703 F.2d at 741, 745. Taylor's action was then remanded to the district court. *Id.* at 745. However, in June 1983, the Supreme Court announced its decision in *DelCostello*, which held that the appropriate limitations period for a hybrid section 301 action is the six-month one contained in the NLRA. *See* 103 S. Ct. at 2293-94. Relying on *DelCostello*, the district court once again awarded summary judgment in favor of Local 980.

II

4. In *DelCostello*, an employee sought to vacate an arbitrator's award. Taylor's principal argument on this appeal is that *DelCostello* is inapplicable where, as here, an employee seeks in a section 301 action to enforce an arbitrator's award. We do not think that *DelCostello* can be so limited.

5. The basis of *DelCostello* was the Court's recognition that state actions dealing with contracts or commercial arbitrations are at best imperfectly analogous to a hybrid section 301 suit. *Id.* at 2291. Such a hybrid action is possible only where the union has breached its duty of fair representation in handling the employee's grievance against the employer. *See Hines v. Anchor Motor Freight*, 424 U.S. 554 (1976); *Vaca v. Sipes*, 386 U.S. 171 (1967). Because a union's breach of its duty of fair representation bears a "family resemblance" to an unfair labor practice under the NLRA, the policy determination underlying the NLRA's six-month limitations period - that the need for expeditious dispute resolution in the labor arena and for uniform procedural treatment of similar claims weighs against any need employees might have for lengthy periods in which to vindicate their rights - also applies to hybrid section 301 actions. *See DelCostello*, 103 S. Ct. at

2294. Thus the Court concluded that the NLRA's six-month period applies to hybrid actions.

6. *DelCostello* draws no explicit distinction between employee actions seeking vacation of arbitral decisions and those seeking enforcement. Nor can we conceive of any convincing reason for such a distinction. The "family resemblance" of a union's breach of its duty of fair representation to an unfair labor practice is not vitiated merely because the breach consists of a failure to enforce an arbitral decision rather than a failure to represent the employee's grievance adequately in the arbitral forum. Wherever this "family resemblance" exists, the need for rapid resolution of labor disputes and for uniformity mandates application of the NLRA's six-month limitation period, absent some countervailing federal policy. *Compare Local Union 1397, USWA v. USWA, AFL-CIO*, No. 84-3141 (3d Cir. Nov. 23, 1984) (NLRA's six-month limitations period applies to an action brought under section 102 of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 412) *with Adams v. Gould, Inc.*, 739 F.2d 858 (3d Cir. 1984) (limitations period of ERISA, rather than that of NLRA, applies to hybrid section 301 lawsuit for employer's breach of a pension agreement), *cert. denied*, 53 U.S.L.W. 3475 (U.S. Jan. 8, 1985). We hold, therefore, that the six-month limitations period of section 10(b) of the NLRA applies to a hybrid section 301 action to enforce an arbitration award.[2]

---

2. Taylor argues that this holding will place this court in conflict with the First and Fifth Circuits, which have held that *DelCostello* does not apply to section 301 actions brought by unions to enforce arbitration awards against employers. *See Derwin v. General Dynamics Corp.*, 715 F.2d 484 (1st Cir. 1982); *IUE v. Ingram Mfg. Co.*, 715 F.2d 886 (5th Cir. 1983), *cert. denied*, 104 S. Ct. 1711 (1984). We disagree. *Derwin* and *Ingram* were straight, non-hybrid, section 301 actions, to which, the Supreme

III

7. Taylor contends that, even if *DelCostello* applies to 301 actions generally, it may not be applied retroactively to his action. This contention need not detain us long. We have already decided, in *Perez v. Dana Corp.*, 718 F.2d 581 (3d Cir. 1983), that *DelCostello* applies retroactively. Having just held that *DelCostello* is not materially distinguishable from this case, there is no need to repeat the retroactivity analysis we undertook in *Perez*. We hold that *DelCostello* is applicable to Taylor's lawsuit.

IV

8. Finally, Taylor contends that the district court erred in holding that his cause of action accrued on December 4, 1978, when he was notified that Local 980 would not assist him in seeking enforcement of the arbitrator's award. The union must have allegedly breached its duty of fair representation before an employee may bring a hybrid section 301 action. *See Vaca v. Sipes*, 386 U.S. 171 (1967). Thus, where an employee seeks to enforce an arbitration award, his hybrid section 301 action accrues either when the union unequivocally refuses to assist him, or, if no such refusal occurs, when the statute of limitations on the union's action against the employer has run. *See Federation of Westinghouse Independent Salaried Unions v. Westinghouse Electric Corp.*, 736 F.2d 896, 902 (3d Cir. 1984); *Taylor I*, 703 F.2d at 743. Here, Taylor did receive an unequivocal refusal on December 4, 1978, when Local 980 notified him that "the Union [had gone] its last mile, and there would be no further action . . . taken on the matter . . . ." Letter from

---

Court has indicated, the rule of *Hoosier Cardinal* still applies. *See DelCostello*, 103 S. Ct. at 2289, 2291; *Ingram*, 715 F.2d at 888. Here, it is precisely the hybrid nature of Taylor's lawsuit that mandates the application of *DelCostello*.

William Beckham, President of Local 980, to Granville Taylor, *quoted in Taylor I*, 703 F.2d at 740. Therefore, the district court correctly concluded that Taylor's cause of action accrued on that date, and was time-barred when he brought it in November 1980, nearly two years later.

V

9. For the foregoing reasons, the judgment of the district court is affirmed.

A. LEON HIGGINBOTHAM, JR., *Circuit Judge*, dissenting.

Relying on *DelCostello v. International Brotherhood of Teamsters*, 462 U.S. 151 (1983), the majority holds that appellant's hybrid section 301/unfair representation suit to *enforce* an arbitration award is barred by the NLRA's six-month limitations period for unfair labor practice claims. As the majority notes, however, *DelCostello* involved a hybrid suit to *vacate* an arbitration award. Though the majority cannot "conceive of any convincing reason" to distinguish suits to vacate arbitration awards from suits to enforce, I believe that such a distinction has -- for cogent reasons -- long been recognized by state and federal law, with the result that limitations periods for suits to enforce are generally longer than those governing suits to vacate. *DelCostello* does not require that we eviscerate this distinction. I therefore respectfully dissent.

The Supreme Court in *DelCostello* made it quite clear that their holding was not to be extended mechanically:

> We stress that our holding today should not be taken as a departure from prior practice in

> borrowing limitations periods for federal causes of action, in labor law or elsewhere. We do not mean to suggest that federal courts should eschew use of state limitations periods anytime state law fails to provide a perfect analogy. . . . Nevertheless, when a rule from elsewhere in federal law clearly provides a closer analogy than available state statutes, and when the federal policies at stake and the practicalities of litigation make that rule a significantly more appropriate vehicle for interstitial lawmaking, we have not hesitated to turn away from state law.

462 U.S. at 171-172. Thus, we must look to the "federal policies at stake" and the "practicalities of litigation" before we may conclude that the NLRA's six-month limitations period is a "significantly more appropriate vehicle for interstitial lawmaking" than the six-year state limitations period that we found to be applicable to appellant's cause of action in *Taylor I*. *See also Adams v. Gould, Inc.*, 739 F.2d 858, 867 (3d Cir. 1984), *cert. denied*, ___ U.S. ___, 105 S. Ct. 806 (1985). In carrying out this analysis, I think we must be cognizant of the fact that the practical effect of borrowing the federal rather than the state statute of limitations in *DelCostello* was to extend (from three to six months) the period in which an employee could bring a suit to vacate, whereas here the effect would be to drastically reduce (from six years to six months) the applicable limitations period. I believe that both the practicalities of litigation and the federal policies at stake militate in favor of a significantly longer period for actions to enforce arbitration awards than the six months allowed for bringing an action to vacate under *DelCostello*.

When an employee seeks to vacate an arbitration award in a section 301/unfair representation hybrid suit, the gravamen of the unfair representation claim

will generally be the union's mishandling of grievance and arbitration procedures, and the cause of action will accrue at a fairly definite date -- the date the adverse arbitration decision is issued. *Cf. DelCostello*, 462 U.S. at 172. In a suit to enforce, however, the gravamen of the complaint will be the union's conduct *after* the arbitration process is complete, and the claim will not accrue until the futility of further union appeals becomes apparent or should have become apparent. *Scott v. Local 863*, 725 F.2d 226, 229 (3d Cir. 1984). Judge Becker has recently described the dilemma the employee confronts:

> The problem is that, unlike other situations where the twin defenses of failure to exhaust and the statute of limitations combine to give the litigant a narrow window in which to file suit, here there is no guarantee that statutes, regulations, or other form of clear, written notice will exist that warn the plaintiff of his peril. . . . [U]nion officials may well be equivocal or contradictory in their communications to dissatisfied members and may send such communications through persons within the internal union hierarchy whose authority to bind the union is at best hazy. As a result, the potential suitor will not know when exhaustion is futile.

Scott, 725 F.2d at 230 (concurring opinion).

Scott was a case where the union refused to bring a grievance to arbitration, and this court applied *DelCostello* to the employees' hybrid action. I submit, however, that in cases such as this one -- where the grievance has been arbitrated and the employee has won -- the "whipsaw" Judge Becker described becomes intolerable and a more generous limitations period is needed. Where the union has assisted an employee in

successfully processing a grievance through to arbitration, it is only natural that the employee will continue to rely on the union rather than the courts, for assistance in enforcing the award, even in the face of evidence that the union may go no further. As we said in *Taylor I:*

> It is the union . . . to whom Taylor looked to protect his recall interest. The union provided the arbitration process procedure as a means for a member to resolve a grievance over such an interest. After a union member exhausts the union's procedure for dispute resolution through arbitration, it is reasonable for that member to expect the union to follow the necessary steps to conclude the dispute.

703 F.2d at 743.

The employee's dilemma is well-illustrated by the present case. Even assuming that the majority is correct in holding that appellant's claim accrued when he received the letter from the Local president stating that the union would go no further, it is apparent that he continued to pursue internal appeals in good faith. There is evidence of record to indicate that appellant could reasonably have believed that the International might take a different view of the matter. This suit was filed shortly after it became apparent that the International would not intercede. The longer limitations period afforded by state law would mitigate the consequences of erroneously relying -- as did the appellant -- on the union's continued efforts, by opening the section 301/unfair representation "window" somewhat wider. The window should not be precipitously closed on employees who, having won the first battle side-by-side with their union -- and often without the aid of independent counsel -- fail to appreciate that their union has suddenly deserted them.

The policies underlying federal labor law point to the same result. The Court in *DelCostello* emphasized the "national interests in stable bargaining relationships and finality of private settlements," 103 S. Ct. at 2294 (quoting *United Parcel Service v. Mitchell*, 451 U.S. 56, 70 (1980)). Stable bargaining relationships require, among other things, that all parties abide by arbitration awards. *See Federation of Westinghouse Independent Salaried Unions v. Westinghouse Electric Corporation*, 736 F.2d 896, 901 (3d Cir. 1984). Thus, actions to enforce stand on a very different footing from actions to vacate. The finality of private settlements, which is undermined by actions at law to vacate, is actually promoted by the availability of actions to compel compliance. Indeed, achieving "finality" is a preeminent goal of *all* arbitration -- whether commercial, labor, or any other -- and in all of these contexts actions to enforce have been accorded more dignity, in the form of longer limitations periods, than actions to vacate. *See e.g.*, 9 U.S.C. §§ 9, 12 (1982) (one year to confirm award, three months to vacate); Uniform Arbitration Act §§ 11, 12 (1978) (no limitation on confirmation, ninety days to vacate); *Taylor I* (under New Jersey law six-year breach of contract limitations period applies to confirmation, ninety-day limitation on actions to vacate). Thus, the "analogy" between actions to enforce commercial arbitration awards and actions to enforce labor arbitration awards is much stronger than the analogy between actions to vacate. Further, I believe that in the context of enforcing arbitration awards, the national interests in stable bargaining relationships and the finality of private settlements override the interests in "expeditious dispute resolution in the labor arena and . . . uniform procedural treatment of similar claims" that the majority emphasizes.

For the foregoing reasons I conclude that the

actions to enforce an arbitration award, and for the reasons given in this court's opinion in *Taylor I*, I would hold that appellant's claim against Local 980 is not time barred.

A True Copy:

Teste:

Clerk of the United States Court of Appeals
for the Third Circuit

APPENDIX B

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT.
DISTRICT OF NEW JERSEY

CIVIL ACTION NO. 80-3774

GRANVILLE B. TAYLOR, JR. :

Plaintiff, :

V. : O P I N I O N

FORD MOTOR COMPANY, and :
LOCAL UNION 980, UAW :
(United Automobile, :
Aerospace & Agriculture :
Implement Workers of :
America), :

Defendants. :

ACKERMAN, District Judge.

This is an action brought pursuant to §301 of the Labor Management Relations Act, 29 U.S.C. §185(a). Plaintiff alleges that defendant Local 980 United Auto Workers (Local 980) breached its duty of

fair representation by failing to notify him of a job opening while he was on lay-off status and by failing to enforce an arbitration award on his behalf.

On January 23, 1984, after a long procedural history which I set forth at that time and will not reiterate, I granted defendant Local 980's motion for summary judgment. The basis for that decision was the United State Supreme Court's ruling that in an action by an employee against his or her union for breach of the duty of fair representation, the National Labor Relations Act's (NLRA) six-month statute of limitations is applicable. Del Costello v. International Brotherhood of Teamsters, 103 S.Ct. 2281 (1983).

This matter is before me again today on plaintiff's motion for reconsideration of my January 23, 1984 ruling.

Rule 12I of the Rules of the United States District Court for the District of New Jersey provides for reconsideration only when counsel has presented new factual matters or controlling decisions which the court has overlooked. The plaintiff has presented neither and I will therefore deny his motion.

Plaintiff suggests that my decision is at odds with the ruling of the New Jersey court in Heffner v. Jacobson, 185 N.J. Super. 524 (Ch.Div. 1982), aff'd 192 N.J. Super 299 (App.Div. 1983). Counsel cited the chancery division's decision in that case in his original brief in opposition to defendant's summary judgement motion. I read it and considered it. It is not, however, a controlling decision. Not only is the case entirely distinguishable factually, but it cannot govern my decision in the

face of a U.S. Supreme Court decision squarely on point. For, as I stated in my oral opinion on January 23, 1984, Del Costello holds that the six-month limitations period under the NLRA, rather than comparable state limitations periods, controls in actions based on a union's breach of its duty of fair representation.

Plaintiff further argues that my conclusion that plaintiff's cause of action accrued on December 4, 1978 is erroneous. I made that decision when the question of the limitations period applicable to plaintiff's claim against Local 980 was first before me on March 1, 1982. Now, nearly two years later, plaintiff seeks to have me reconsider that decision. I will not at this late date reconsider that issue. Moreover, I believe that my earlier decision was correct.

My January 23, 1984 decision granting summary judgment will, therefore, stand. See attached order.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CIVIL ACTION NO. 80-3774

GRANVILLE B. TAYLOR, JR. :

Plaintiff, :

v. : O R D E R

FORD MOTOR COMPANY, and :
LOCAL UNION 980, UAW :
(United Automobile, :
Aerospace & Agriculture :
Implement Workers of :
America), :

Defendants. :

This matter having been brought before the court on motion of attorneys for defendant Union, and the court having considered the papers filed by both parties, and having considered same pursuant to Rule 78, and for good cause having been shown.

It is on this 24th day of April, 1984;

ORDERED that the Court's decision on January 23, 1984 granting defendant Local 980's motion for summary judgment stands.

HAROLD A. ACKERMAN,
U.S.D.J.

THE COURT: Thank you.

Well, this is an action brought pursuant to Section 301(a) of the Labor Management Relations Act (LMRA), 29 U.S.C. Section 185(a).

The plaintiff, Granville Taylor, alleges that Ford Motor Company, his employer, and Defendant Local 980, United Auto Workers (Local 980), his Union, failed to notify him of a job opening while he was on layoff status in violation of the applicable Collective Bargaining Agreement.

The matter was grieved to arbitration which resulted in an award to plaintiff of retroactive pension rights and benefits. Plaintiff seeks in this action to enforce that award.

In June, 1981, I dismissed Defendant Ford from this action determining that

plaintiff's claims against it were time-barred. Plaintiff's remaining claims are against the Union for breach of its duty of fair representation in failing to notify him of the vacancy in his job classification and failing to confirm the arbitration award.

The case is before me today on Local 980's Motion for Summary Judgment grounded on the Statute of Limitations and plaintiff's Cross-Motion for Summary Judgment on the issue of liability. I will consider the defendant's Motion first.

Rule 56 of the Federal Rules of Civil Procedure provides that Summary Judgment is not to be granted unless, after all reasonable inferences are drawn in favor of the non-moving party, there is no genuine issue of material fact, and the moving party is entitled to judgment as a

matter of law. See DeLong Corp. v. Raymond International, 622 F.2d 1135 (3d Cir. 1980).

This case was last before me in March, 1982 at which time I granted Defendant Local 980's identical Summary Judgment Motion. At that time I was asked to determine which of two State Statutes of Limitations would control plaintiff's claims.

Plaintiff argued that the applicable limitations period was the six-year period for contractual claims, NJSA 2A:14-1. Defendant argued that New Jersey's three-month statute governing confirmation, modification and vacation of commercial arbitration awards, NJSA 2A:24-7, was the controlling statute.

Relying on the U.S. Supreme Court's decision in United Parcel Service v. Mitchell, 451 U.S. 56 (1981), I determined

that the three-month Statute of Limitations was applicable. As I determined that plaintiff's claim against the Union accrued no later than December 1978, I found this action, which was filed in November 1980, time-barred. Accordingly, I granted the Union's Summary Judgment Motion.

Plaintiff then appealed to the Third Circuit Court of Appeals. On March 30, 1983, that Court reversed my decision holding that the six-year Statute of Limitations for contract claims provided the most appropriate limitations period and that plaintiff's claims were, therefore, filed timely. Taylor v. Ford Motor Co., 703 F. 2d 337 (3d Cir. 1983).

That Court then remanded this matter to this Court for further proceedings and on July 13, 1983, I vacated my earlier decision.

Subsequently, on June 8, 1983, in Del Costello v. International Brotherhood of Teamsters, et al., 103 S.Ct. 3381, United States Supreme Court decided the precise issue presented in this action. The Court held that actions brought by an employee against a Union alleging breach of the duty of fair representation are not governed by State Statutes of Limitations but are controlled by the six-month limitations period in Section 10(b) of the National Labor Relations Act (NLRA). In Perez v. Dana Corp., et al., 718 F.2d 581 (3d cir. 1983), the Third Circuit then determined to apply the DelCostello rule retroactively.

Defendant Local 980 thus moves for Summary Judgment claiming that under the Del-Costello decision, plaintiff's claims are time-barred as a matter of law.

I note at the outset that in these circumstances this Court in not bound by the decision rendered by the Third Circuit in this action. Instead, the Court has an overriding obligation to apply the intervening rule announced by the U.S. Supreme Court, see Zichy v. City of Philadelphia, 590 F. 2d 503 (3d Cir. 1979).

Plaintiff argues, however, that Del-Costello applies only to actions to vacate arbitration awards and is inapplicable to plaintiff's action to confirm an award. I disagree.

The DelCostello Court clearly painted with a broader brush than plaintiff suggests. That Court did not limit its decision to the facts before it but instead sought to define a limitations period applicable to all claims between employees and their Unions premised on a

breach of the duty of fair representation.

I have not been able to perceive any distinction drawn by the Court between actions to vacate arbitration awards and those in which plaintiff seeks to confirm such an award.

Moreover, the purposes underlying the DelCostello ruling are equally served by its application to the instant case. First, that Court determined that short "State limita-tions periods for vacating arbitration awards fail to provide an aggrieved employee with a satisfactory opportunity to vindicate its rights under Section 301 of the fair representation doctrine." See Page 2291. Second, the Court emphasized that longer statutes would "preclude the relatively rapid final resolution of labor disputes favored by labor law." See Page 2293.

Finally, the Court cited "the need for uniformity", in Federal labor Law as a reason militating against borrowing State limitations periods. See Page 2294 in which the Court quoted from UPS vs. Mitchell at Page 70, Justice Stewart concurring in the judgment.

In my view these reasons dictate that the six-month limitation period in Section 10(b) of the NLRA be applied to the instant claims.

I find no merit in plaintiff's additional arguments against the application of the DelCostello rule.

As plaintiff did not file suit until November 19, 1980, nearly two and a half years after the applicable limitations period had run, Summary Judgment is appropriate and I will grant Defendant Local 980's Motion. This disposition makes it unnecessary to consider

plaintiff's Cross-Motion and it is therefore denied.

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

GRANVILLE B. TAYLOR, JR.

vs.

FORD MOTOR COMPANY, and
LOCAL UNION 980, UAW
(United Automobile, Aerospace
& Agriculture Implement
workers of America)

Defendant,

Honorable Harold A. Ackerman

Civil Action No. 80-3774

This matter having been opened before the Court by Giblin & Giblin, Esqs., attorneys for defendant, David A. Biederman, Esq., appearing and in the presence of Klausner & Hunter, Esqs., attorneys for plaintiff, Stephen E. Klausner, Esq., appearing; and the court having considered the papers filed by both

parties; and the court having heard the legal arguments of both counsel; and for good cause shown;

It is on this 23rd day of January 1984, ORDERED that the complaint of plaintiff be and hereby is dimissed as against Local 980, UAW.

Harold A. Ackerman,
U.S.D.C.J.

DATED:

APPENDIX D

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

(Honorable Harold A. Ackerman)

GRANVILLE B. TAYLOR, JR.,	:	
	:	
Plaintiff,	:	Civil Action
	:	
vs.	:	No. 80-3774
	:	
FORD MOTOR COMPANY, and LOCAL UNION 980, UAW (UNITED AUTOMOBILE, AEROSPACE & AGRICULTURE IMPLEMENT WORKERS OF AMERICA),	:	
	:	
Defendants.	:	

JUDGMENT OF MANDATE

Pursuant to the opinion and mandate of the United States Court of Appeals for the Third Circuit heretofore filed in these proceedings, the Order of this Court entered herein on March 15, 1982, granting Defendant, Local 980 UAW (United Automobile, Aerospace & Agriculture

Implement Workers of America), summary judgment dismissing the Complaint, should be and it hereby is vacated for further proceedings consistent with the opinion of the United States Court of Appeals; and it is further.

Ordered and Adjudged that costs taxed in the United States Court of Appeals in favor in Plaintiff, in the amount of Five Hundred Sixty-Seven ($567.00) Dollars, be entered.

DATED: 7/13/83

_____
U.S.D.C.J.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 82-5211

GRANVILLE B. TAYLOR, JR.,
Appellant

v.

FORD MOTOR COMPANY, and LOCAL 980, UAW (UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURE IMPLEMENT WORKERS OF AMERICA),
Appellee

(D.C. Civil No. 80-3774)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Argued: November 18, 1982

Before: GIBBONS, HIGGINBOTHAM and BECKER,
Circuit Judges.

(Filed March 30, 1983)

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OPINION OF THE COURT

A. LEON HIGGINBOTHAM, JR., *Circuit Judge.*

Granville Taylor, appeals from a judgment of the United States District Court for the District of New Jersey holding that a ninety-day statute of limitations for actions to confirm arbitration awards may bar a union member from suing a union for failure to enforce an arbitration award within the statutorily allotted time. Taylor filed suit initially against Ford Motor Company (Ford), the employer, and Local 980 of the United Automobile, Aerospace and Agriculture Implement Workers of America, (Local 980), the collective bargaining agent, under §301(a) of the Labor-Management Relations Act, 29 U.S.C. §185. Ford's motion for summary judgment contended that Taylor's claims against the employer for failure to notify him of a vacancy while he was laid off were untimely under New Jersey Statutes Annotated (N.J. STAT. ANN.) 2A: 24-7. The district court granted the motion and dismissed Ford from the case. Taylor proceeded with the lawsuit against the union for failure to confirm an arbitration award. The district court held that a ninety-day statute of limitations was applicable to Taylor's lawsuit against the union. We find that the appropriate limitations period for the confirmation of an arbitration award is the six-year period found in N.J. STAT. ANN. 2A:14-1. Taylor therefore has the right to confirm the arbitration award.

I.

Ford Motor Company laid off the appellant from his position as a pumpman on March 11, 1969. The terms of the collective bargaining agreement provided that Ford and the union notify Taylor whenever a vacancy occurred in his classification. (Aa-16). A vacancy occurred in Taylor's classification in March 1973, and neither Ford nor Local 980 notified Taylor of the vacancy. Taylor was not recalled to work until May 1976. One month later, in June 1976, he filed a grievance against both Ford and Local 980 seeking back wages, insurance coverage, holiday and vacation pay, and pension credits from the time Ford filled the vacancy in 1973 until Taylor's reinstatement in 1976. Pursuant to the collective bargaining agreement, Taylor submitted the matter to arbitration. On August 8, 1978, an umpire awarded Taylor "pension rights and benefits from May 29, 1973." The umpire denied Taylor's claim for back pay because the contract precluded back-pay liability against the company. (Aa-50-1).

In September 1978, Taylor's attorney wrote to the union seeking clarification of the umpire's award. He sought an assurance from the union that it would serve as an advocate for Taylor with Ford in resolving the dispute. The letter specifically noted that:

> [U]nder New Jersey law, the arbitration award must be confirmed within three months of the date of the delivery of the award, unless the parties extend the time in writing for such confirmation. This means that if the Union cannot get the Company to agree in writing to extend that time, it will be necessary for you to apply to Court for confirmation of that award before that three month period expires. (Aa 59).

The union's response to Taylor's request for clarification of the award came from two sources, the interna-

tional representative of the union and a representative of Local 980. The response from the international representative of the UAW, a letter dated November 30, 1978, disclosed that the UAW/Ford Retirement Board had denied Taylor pension credits notwithstanding the umpire's decision. (Aa-61).[1] William Beckham, writing for the president of Local 980 in a letter dated December 4, 1978, advised Taylor's counsel that on submitting the case to the arbitrator the "Union . . . [went] its last mile, and there would be no further action . . . taken on the matter within the Union." (Aa-64). It also advised Taylor's counsel that the internal union procedures did not allow an attorney to represent a member in this type of proceeding. (Aa-63).

Taylor pursued the claim by filing an appeal with the Public Review Board of the International Union, UAW, on January 11, 1979, (Aa-66), charging that Local 980 did not properly represent and protect his interests and rights. The Public Review Board issued an order of remand on June 14, 1979. In October and again in December of the following year, 1980, the Board asked appellant's counsel to respond to the union's position on the grievance. In the interim month, November 1980, Taylor filed suit in the United States District Court un-

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[1] After informing Taylor of the UAW/Ford Retirement Board's decision, the international representative, Lew Caulford, then wrote to the umpire asking for clarification of the award. The letter from Caulford to the umpire reads in part:

> Mr. Vic Onufrieff stated in the hearing that Ford Motor Company would agree to give Mr. Taylor his pension rights and benefits. It is my understanding that Mr. Onufrieff has alledged [sic] that he never made that statement and that is a complete untruth.
>
> As a man of his word and a representative of Ford Motor Company, I request that Mr. Onufrieff grant your decision in PDH-216.
>
> (Aa-62)2.

der Section 301(a) of the LMRA.[2] He named Ford and Local 980 as defendants. He alleged that Ford violated the contract by failing to notify him of the classification vacancy. He alleged that Local 980 breached its duty of fair representation and also violated the collective bargaining agreement by failing to notify him of that same vacancy. (Aa-12-13).

Ford moved for summary judgment. The district court dismissed Ford from the lawsuit, relying on *United Parcel Service, Inc. v. Mitchell,* 451 U.S. 56 (1981). The court found that the appropriate statute of limitations applicable to an employer in an action to vacate, confirm or modify an arbitration award was the ninety-day period found in N.J. STAT. ANN. 2A:24-7. Taylor's action against the union remained. The trial judge ruled that the limitations period began to run from the date of the breach which was "no later than December 4, 1978 . . . [a]t this point it was clear that the union was not going to do anything about [enforcing the award]." (Aa-123). The district court held that Taylor's action against the union was barred also by the ninety-day limitations period.

On appeal, Taylor argues that the ninety-day statute of limitations found in the arbitration statute is not applicable in an action to confirm an arbitration award. He argues for a distinction between an action to vacate an arbitration award and an action to enforce an arbitration award. Taylor argues that unlike the cause of action that

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2. Section 301(a), 29 U.S.C. §185, authorizing suits by and against labor organizations, reads:

> (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

a losing party brings to vacate an arbitration award, the cause of action that a prevailing party brings to enforce an arbitration award is a contractual one that is governed by the state's six-year statute of limitations. Taylor therefore seeks to enforce that favorable award by moving for court confirmation of the award.

II.

To determine whether a union member's §301 claim is time-barred a federal court must look to the appropriate state statute of limitations. *International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW), AFL-CIO v. Hoosier Cardinal Corp.*, 383 U.S. 696 (1966); *United Parcel Service, Inc. v. Mitchell*, 451 U.S. at 60. There are two separate New Jersey statutes which arguably authorize appellant to confirm his arbitration award. One is N.J. STAT. ANN. 2A:24-7, court confirmation of arbitration awards. The other is N.J. STAT. ANN. 2A:14-1, the limitations statute for contract claims.

N.J. STAT. ANN. 2A:24-7[3] outlines the procedure for court confirmation of an arbitration award. To apply for court confirmation, an arbitration award must be in writing and verified. A party to the arbitration proceeding may initiate the confirmation process within ninety days of the delivery date. The parties may extend that time period by a written agreement The court will not grant summary confirmation of an arbitration award if the opposing party contends that the award should be vacated, modified, or corrected.

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3. N.J. STAT. ANN. 2A:24-7, entitled application for confirmation, vacation or modification of award, reads in its entirety:

> The award must be in writing and acknowledged or proved in like manner as a deed for the conveyance of real estate and delivered to one of the parties or his attorney.
>
> A party to the arbitration may, within 3 months after the award is delivered to him, unless the parties shall extend the

N.J. STAT. ANN. 2A:14-1[4] prescribes the limitations period applicable to actions for breach of contract. A party loses his right to relief for breach of a contract if the lawsuit is not commenced within six years of the accrual of the action.

An action to confirm an arbitration award is a summary action. New Jersey Rule of Civil Practice (R.) 4:67 is the state's procedural rule for court confirmation of *any* claim which can be resolved in a summary manner. Thus, an action for confirmation of an arbitration award under either N.J. STAT. ANN. 2A:24-7 or 2A:14-1 is made pursuant to R. 4:67-1(a) and R. 4:67-2(a). Subsection 1(a) of R. 4:67, outlining the rule's applicability, provides that summary action is appropriate whenever the court is allowed by rule or by statute to proceed in a summary manner.[5] Rule 67 can be invoked

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time in writing, commence a summary action in the court aforesaid for the confirmation of the award or for its vacation, modification or correction. Such confirmation shall be granted unless the award is vacated, modified or corrected.

4. N.J. STAT. ANN. 2A:14-1 addresses the limitations period for various civil actions. It provides:

> 2A:14-1. 6 years. Every action at law for . . . recovery upon a contractual claim or liability, express or implied, not under seal, or upon an account other than one which concerns the trade or merchandise between merchant and merchant, their factors, agents and servants, shall be commenced within 6 years next after the cause of any such action shall have accrued.

5. R. 4:67-1(a) gives the rule's applicability:

> This rule is applicable (a) to all actions in which the court is permitted by rule or by statute to proceed in a summary manner, other than actions for the recovery of penalties.

R. 4:67-2(a) details the manner of enforcement of R. 4:67-1(a):

> (a) Order to Show Cause. If the action is brought in a summary manner pursuant to R.4:67-1(a), the complaint, verified by affidavit made pursuant to R. 1:6-6, may be presented to the court ex parte, except that if the action is pending in the Law

also to provide for a summary remedy of enforcement whenever it appears that there is no genuine issue of material fact. Subsection 1(b) of Rule 67 makes summary action appropriate to *any* Superior or county court actions with the exception of matrimonial actions or those which involve unliquidated monetary damages. In these actions, the likelihood that the action can be resolved summarily must be apparent to the court and to the other party.[6]

In order to proceed under R. 4:67-1(b), a party must make a motion to proceed summarily under 4:67-2(b)[7] to

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NOTE — *(Continued)*

Division of the Superior Court or a county court, it shall be presented to the Assignment Judge or to such other judge as he designates. The court, if satisfied with the sufficiency of the application, shall order the defendant to show cause why final judgment should not be rendered for the relief sought. The order shall be so framed as to notify the defendant fully of the terms of the judgment sought, and subject to the provisions of R. 4:52, it may embody such interim restraint and other appropriate intermediate relief as may be necessary to prevent immediate and irreparable damage.

6. R. 4:67-1(b) applies:

(b) to all other actions in the Superior Court or a county court other than matrimonial actions and actions in which unliquidated monetary damages are sought, provided it appears to the court, on motion made pursuant to R. 1:6-3 and on notice to the other parties to the action not in default, that it is likely that the matter may be completely disposed of in a summary manner.

7. R. 4-67-2(b) reads:

(b) Motion for Order to Proceed Summarily. Actions referred to in R. 4:67-1(b) shall be commenced, and proceedings taken therein, as in other actions, except as herein provided. The notice of motion to proceed summarily shall be supported by affidavits made pursuant to R. 1:6-6 and, if addressed to the defendant, may be served with the summons and complaint; but it shall not be returnable until after the expiration of the time within which the defendant is required to answer the complaint. If the court is satisfied that the matter may be completely disposed of on the record (which may be supplemented

convert a plenary action into a summary action. The defendant must be given notice of the conversion and an opportunity to respond to the motion. The court reviews the sufficiency of the motion to determine if summary remedy is appropriate. The rule directs the court to order a summary action if the matter can be disposed of completely on the record or if the testimony is minimal.

III.

The claim that a union member brings against the union in a Section 301 lawsuit is substantively distinguishable from the one that an employee brings against the employer. Section 301 joins the two claims procedurally in an effort to create federal court jurisdiction over both causes of action. 29 U.S.C. §185. Taylor characterized his Section 301 claim against the employer as a breach of the collective bargaining agreement; the claim against the union was for breach of the duty of fair representation, in violation of the collective bargaining agreement. Taylor is seeking to enforce the award under New Jersey's six-year limitations period for bringing a cause of action for breach of a contractual claim, thus allowing him to have the award enforced under a procedural rule providing for summary action.

When the breach of a contractual claim is based upon an agreement to arbitrate, the cause of action does not accrue until the plaintiff requests arbitration and the defendant refuses to comply. *Mitchell v. Alfred Hofmann, Inc.*, 48 N.J. Super. 396, 137 A.2d 569 (1959). In the instant case, the right to recall was a bargained for interest. Both Ford and Local 980 overlooked Taylor's availability when a vacancy occurred. It is the union, however, to whom Taylor looked to protect his re-

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by interrogatories, depositions and demands for admissions) or on minimal testimony in open court, it shall, by order, fix a short date for the trial of the action, which shall proceed in accordance with R. 4:67-5, insofar as applicable.

call interest. The union provided the arbitration process procedure as a means for a member to resolve a grievance over such an interest. After a union member exhausts the union's procedure for dispute resolution through arbitration, it is reasonable for that member to expect the union to follow the necessary steps to conclude the dispute. When the union failed to do so, the cause of action for breach of contract accrued and the limitations commenced to run. Even if we find that that breach took place on or before December 4, 1978, as did the trial judge, Taylor initiated his cause of action well within the six year period.

The lower court resolved this dispute against the union for failure to enforce a favorable arbitration award in a fashion that limited relief to the applicability of N.J. STAT. ANN. 2A:24-7. (Aa-114-129). To invoke this statute *ab initio*, one must decide the relevance of *United Parcel Service, Inc. v. Mitchell, supra*; this was the issue on which the trial judge focused. There were three challenges as to the relevance of *United Parcel*. First, *United Parcel* involved an action to vacate an arbitration award; this is an action to confirm an arbitration award. Second, *United Parcel* involved an action against an employer; this is an action against a union. Finally, *United Parcel* was decided subsequent to the Ford umpire's decision and there is the issue of its retroactivity. As intriguing as these three issues are, we need not decide them because there is another statutory provision available to the appellant which is separate and apart from N.J. STAT. ANN. 2A:24-7.[8] In light of the contractual limitations pe-

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8. The trial judge resolved this case based on United Parcel Service, Inc. v. Mitchell, *supra*. That case held that a ninety-day statute of limitations for actions to vacate an arbitration award is applicable in a section 301 suit brought against an employer by an employee. *United Parcel* left open the question of the appropriate limitations period in a Section 301 lawsuit that an employee brings against the union for the vacation of an award. We are aware that the Supreme Court has granted certiorari in Flowers v. Local 2602

riod and the procedural rule for summary enforcement, the issue before us is not the applicability of *United Parcel;* rather, it is whether the New Jersey statute of limitations for contracts enables Taylor to enforce the arbitration award by a procedural rule of summary action.

It is undisputed that Local 980 failed to confirm the arbitration award within ninety days. The district court found that the union's failure, in effect, forfeited Taylor's right to summary confirmation under 2A:24-7. Therefore, the substantive question that we are asked to resolve is whether a party whose contractual claim has resulted in a favorable arbitration award may enforce the award under R.4:67-2(b), which provides for a summary enforcement whenever a court can resolve a matter on the record, when he has lost the right to summary confirmation of that award but has not exceeded the limitations period for bringing the cause of action under 2A:14-1.

IV.

A recent New Jersey case held that failure to timely confirm an arbitration award under 2A:24-7 was not a bar to a prevailing party's right to enforce an arbitration award under R. 4:67-2(b). In *Heffner v. Jacobson,* 185 N.J. Super. 524 (1982), an arbitration award in favor of the prevailing party was enforced although the defendant had delayed beyond the running of the ninety-day

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of U. S. Steelworkers of America, 671 F.2d 87 (2d Cir. 1981), *cert. granted,* 51 U.S.L.W. 3419 (No. 81-2408) and DelCostello v. International Brotherhood of Teamsters, 679 F.2d 879 (4th Cir., 1982), *cert. granted,* 51 U.S.L.W. 3419 (No. 81-2386). Both of these cases raise the issue of the applicable statute of limitations in suits in which a duty of fair representation claim has been filed against the union and a separate related cause of action has been filed against the company. We need not reach this issue, however, because the appellant is entitled to judgment on a summary remedy.

statute. Jacobson purchased Heffner's accounting practice. A provision in the contract was a covenant not to compete. Heffner sued Jacobson for breach of that contract provision. Jacobson sought arbitration to resolve the dispute. Jacobson won a favorable award in December 1980. In March 1981 Heffner moved to vacate the award. The motion was denied, but the award in Jacobson's behalf had not been confirmed. Jacobson, after nearly eighteen months, moved for confirmation of the award. The court found that the party, by delaying beyond the ninety-day statutory confirmation period had lost the right to enforcement under 2A:24-7 and R. 4:67-1(a) and 4:67-2(a). Jacobson was, however, allowed to enforce the award due to the six-year contractual limitations period by filing a motion under R. 4:67-2(b) to proceed summarily.

The *Heffner* court distinguished the rights of a losing party in arbitration who might move to vacate an award more than three months after the award was delivered from the rights of a prevailing party in arbitration who might delay beyond the three month statutory period to move for confirmation of the award. 185 N.J. Super. at 527. The court found that the arbitration statute which prescribes a three-month limitation period does not override summary enforcement of arbitration awards under R. 4:67-2(b). It interpreted the language in 2A:24-7 as permissive and not mandatory, thus leaving summary action enforcement as an available remedy. *Id.* at 528. Thus, what the court determined was significant in the *Heffner* case was that in an action to confirm an arbitration award, as opposed to one to vacate, the longer state statute of limitations is applicable rather than the shorter one.

We think that this decision of the appellate division of the New Jersey Superior Court, in the absence of any indication to the contrary, is a strong indicator of the way that the New Jersey Supreme Court would resolve this

issue. We therefore follow the decision of the *Heffner* court. We find that in New Jersey, even when an action for the confirmation of an arbitration award is filed after ninety days, the ninety-day limitations period in the arbitration statute will not bar the confirmation of an arbitrator's award under the prodecural rule of summary enforcement. Summary action is appropriate in this case because the underlying dispute has been resolved in arbitration. The elements of the summary action rule have been satisfied here. There is a record that chronicles the arbitration proceedings which includes the umpire's decision in favor of Taylor, Taylor's seeking a clarification of that award, and Taylor's filing of an appeal with the proper body when he failed to receive that clarification. Thus, the record shows that the union's internal procedures did not protect Taylor's interests in having the award confirmed. R. 4:67-2(b) provides for that confirmation and will protect his interests.

We hold, therefore, that a prevailing party in an arbitration proceeding who has not confirmed an award within the statutory limitations period under N.J. STAT. ANN. 2A:24-7 has not lost the right to enforce that award given the six year limitations period for contractual claims found in N.J. STAT. ANN. 2A:14-1.

V.

We will vacate the order of the district court granting summary judgment in favor of the union and remand the case for further proceedings consistent with this opinion.

A True Copy:

Teste:

Clerk of the United States Court of Appeals
for the Third Circuit

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 82-5211

GRANVILLE B. TAYLOR, JR.,
Appellant

v.

FORD MOTOR COMPANY, and LOCAL 980, UAW (UNITED AUTOMOBILE, AEROSPACE and AGRICULTURE IMPLEMENT WORKERS OF AMERICA),
Appellee

(D.C. Civil No. 80-3774)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Argued November 18, 1980

Before: GIBBONS, HIGGINBOTHAM and BECKER,
(*Circuit Judges*)

(Opinion Filed March 30, 1983)

ORDER AMENDING OPINION

It is ordered that the slip opinion in the above matter is hereby amended as follows:

The citation to *Heffner v. Jacobson*, on p. 11, Part IV, sentence 5 to read:

N.J. Super.524 (Ch.Div.1982),

On p. 12, second full paragraph, line 1, the word "appellate" deleted and the word "chancery" substituted.

A. LEON HIGGINBOTHAM
Circuit Judge

DATED: April 12, 1983

A True Copy:
Teste:

Clerk of the United States Court of Appeals
for the Third Circuit

(A.O. U. S. Courts, The Legal Intelligencer, Phila., Pa.)

APPENDIX E

FOR THE THIRD CIRCUIT

No. 82-5211

GRANVILLE B. TAYLOR, JR., Appellant

vs.

FORD MOTOR COMPANY, and LOCAL UNION 980, UAW (UNITED AUTOMOBILE AEROSPACE & AGRICULTURE IMPLEMENT WORKERS OF AMERICA)

(D.C. Civil No. 80-03774)
ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE -- DISTRICT OF NEW JERSEY - Trenton

Present: GIBBONS, HIGGINBOTHAM and BECKER,
Circuit Judges

AMENDED JUDGMENT

This cause came on to be heard on the record from the United States District Court for the -- District of New Jersey - Trenton and was argued by counsel on November 18, 1982.

On consideration whereof, it is now here ordered and adjudged by this Court

that the judgment of the said District Court entered March 15, 1982, be, and the same is hereby vacated and the cause remanded for further proceedings consistent with the opinion of this Court. Costs taxed in favor of Appellant.

ATTEST:

Clerk

April 19, 1983

Certified as a true copy and issued in lieu of a formal mandate on June 10, 1983.

Test:

Chief Deputy Clerk, United States Court of Appeals for the Third Circuit.

Costs taxed in favor of Appellant as follows:

Docketing Fee.....	$ 65.00
Appendix.....	$208.00
Brief.....	$180.00
Reply Brief.....	$114.00
TOTAL.....	$567.00

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CIVIL NO. 80-3774

GRANVILLE B. TAYLOR, JR., Plaintiff	ORAL OPINION
v.	OF THE COURT
FORD MOTOR COMPANY, et al, Defendants	

March 1, 1982
Trenton, New Jersey

BEFORE:

THE HONORABLE HAROLD A. ACKERMAN,
U.S.D.J.

APPEARANCES:

STEPHEN B. KLAUSNER, ESQUIRE,
For the Plaintiff.

GIBLIN & GIBLIN, ESQUIRES,
BY: DAVID LEHRECKE, ESQUIRE,
For Defendant, UAW Local 980.

THE COURT: Well, this is a suit brought pursuant to Section 301 of the Labor Management Relations Act (LMRA), 29 U.S.C. Section 185 (a).

The plaintiff, Granville Taylor, alleges that the defendant, Ford Motor Company, his employer, failed to notify him of a job opening while he was on a layoff status in violation of the applicable collective bargaining agreement.

The matter was grieved to arbitration which resulted in an award of retroactive pension credits. Plaintiff alleges that defendant, Local 980, United Auto Workers (Local) breached its duty of fair representation failing to notify him of the job opening and by failing to enforce the arbitration award.

The case is before me today on defendant Local's motion for summary judgment and plaintiff's cross motion for partial summary judgment on the issue of his entitlement to the retroactive pension credits awarded in the arbitration. I will consider defendant's motion first.

Summary judgment is only appropriate if there is no dispute as to a material fact and the moving party is entitled to judgment as a matter of law. On a motion for summary judgment, I must view the evidence in a light most favorable to the party opposing the motion, drawing every reasonable inference in his or her favor.

With this standard in mind, I have reviewed the pleadings, affidavits and moving papers, and the following facts appear clear:

The plaintiff, Granville Taylor, a pumpman employed by Ford, was laid off on

March 11, 1969. In May of 1973 Ford failed to notify Taylor of a vacancy in his classification in violation of his recall rights under the collective bargaining agreement. The vacancy was filled through a promotional posting.

In May of 1976, after plaintiff wrote to Ford about his status, Ford discovered its 1973 error and subsequently reinstated him.

Plaintiffs sought backpay and benefits from the time the vacancy was filled to his reinstatement. The matter was grieved by the Local and submitted to arbitration before Umpire Hanalon. On August 8, 1978, the Umpire rendered his decision which denied plaintiff backpay, but ordered that plaintiff be credited with certain pension benefits. The Umpire's decision states:

"During the umpire hearing, the company agreed that the aggrieved should be credited with pension rights and benefits from the period from May 29, 1973, to date of reinstatement and based upon that agreement, the Umpire orders that this be done."

The Local did not pursue the matter further.

On September 18, 1978, plaintiff wrote to Ford and attempted to obtain compliance with the award, requesting payments of various benefits he thought had been awarded, and confirmation of the pension credits.

Ford advised him by letter dated September 27, that the award made no provisions for cash payment of benefits and that the pension board would consider the question of pension credits. Plaintiff's then attorney sought

assistance from the Local to obtain compliance with the award on September 29. He reminded the Local that the statute of limitations for confirming or vacating arbitration awards was three months and asked the Union to have the award clarified.

On November 21, 1978, after the three-month statute of limitations period had expired, plaintiff's attorney again wrote to the Local asking it to utilize whatever internal union procedures were available to protect plaintiff's rights.

By letter dated November 30, 1978, Leo Caulford, an international representative of UAW, informed the plaintiff that he was not entitled to holiday and vacation pay for the period before his reinstatement and that the UAW/Ford Retirement Board had denied him

pension credits notwithstanding the Umpire's decision.

On the same day Mr. Caulford wrote to the umpire asking for clarification of his decision.

By letter of December 4, 1978, the administrative assistant to the UAW's international president, William Beckham, informed plaintiff's attorney that "the union has gone its last mile, and there would be no further action that could be taken on the matter within the Union." See Exhibit F.

Nonetheless, plaintiff pursued his internal union remedies charging that the Local had acted neglegently in failing to notify him in 1973 of the pumpman vacancy.

Without obtaining satisfaction, plaintiff abandoned the union procedures and filed suit in the United States District Court on November 19, 1980.

On June 26, 1981, I granted summary judgment to Defendant Ford on statute of limitations grounds. Relying on the United States Supreme Court's decision in United Parcel Service v. Mitchell, 451 U.S. 56 (1981), I held that the statute of limitations applicable to plaintiff's claims against Ford was New Jersey's three-month statute governing confirmation modification and vacation of arbitration awards. N.J.S.A. 2A:24-7.

Since plaintiff's complaint was filed more than three months after the arbitration award was delivered, I held that plaintiff's claims against Ford were barred.

Today defendant Local seeks summary judgment asserting as one of its grounds the same statute of limitations defense relied on by Ford. Mitchell, supra, the key case on the issue, only involved

claims against an employer because the defendant union had not petitioned for review in the Supreme Court.

Defendant Local argues that the rationale in Mitchell should be extended to unions as well.

According to the defendant, and I am quoting now from defendant's brief, "All post-Mitchell courts faced with the issue have held that the short arbitration limitations period applies to duty of fair representation suits against unions where the underlying contract violation has been taken to arbitration." Davidson v, Railway Express, Inc., 650 F.2d 902 (7th Cir. 1981); Fields v. Babcock & Wilcox, 108 LRRM 3150 (W.D.Pa.); Kikos v. Teamsters, 108 LRRM 2787 (E.D.Mich. 1981); Scott v. Chrysler Corporation, 107 LRRM 3086 (E.D.Mich. 1981); Penson v. Chrysler

Corporation, Civil Action No. 77-579, unpublished memorandum and order.

Even the Ninth Circuit in Singer v. Flying Tiger Line, 652 F.2d 1349 (9th Cir.) admitted that "Mitchell would have been applied to claim against union had issue been raised at trial court level." See that opinin at page 1353. Singer declined to apply Mitchell retroactively because it was decided while Singer was on appeal.

Plaintiff, relying heavily on Justice Stevens' dissent in Mitchell, argues that a claim for breach of the duty of fair representation is distinct from claims against an employer and cannot be characterized as an action to vacate an arbitration award. Therefore, the three-month statute of limitations, N.J.S.A. 2A:24-7 is inappropriate to his claims against the Local.

Plaintiff also cites several pre-Mitchell cases from the Third Circuit which hold that the six-year statute of limitations for contracts was appropriate for suits against the union.

The validity of those cases, however, is undercut, I find, by Mitchell, because the rationale and language used by the court implicitly extends to suits against unions where the underlying grievance against the company was arbitrated. The court in Mitchell stated, "We think that the unfair representation claim made by an employee against his union, even though his employer may ultimately be called upon to respond in damages for it if he is successful, is more a creature of 'labor law' as it has developed since the enactment of Section 301 than it is of general contract law. We said in Hoosier Cardinal that one of the leading federal

policies in this area is the 'relatively rapid disposition of labor disputes.' 383 U.S. at 707. Cf. 29 U.S.C. Section 160(b) (1976) (6-month period under NLRA). This policy was one of the reasons the court in Hoosier Cardinal shose the generally shorter period for actions based on an oral contract rather than that for actions upon a written contract, and similar analysis supports our adoption of the shorter period for actions to vacate an arbitration award in this case." See Page 63, and I have omitted the footnotes.

In determining what statute of limitations was appropriate, the Court looked to what effect success of the suit would have, not to how the plaintiff styled his suit. See Mitchell at page 62.

Because the suit, if successful, in Mitchell would have resulted in upsetting the arbitrator's award, the Court held

that the New York statute governing vacation of arbitration awards was appropriate.

When plaintiff's claims against the Local are considered in accordance with Mitchell, I find that the appropriate analogous statute of limitations is the three-month statute.

Plaintiff asserts two separate instances of unfair representation. Plaintiff claims that the Local breached its duty when (1) it failed to notify him of the pumpman vacancy in 1973; and (2) when it failed to secure the benefits of the arbitration award.

Success on plaintiff's first claim would have the effect of supplementing the arbitration award since plaintiff could claim as damages all of the items of relief denied by the umpire.

Moreover, plaintiff's right to recover on this claim is dependent upon a finding that the employer had violated the collective bargaining agreement. Thus, by necessity, the claim had to await arbitration of the grievance against the company or the company's refusal to arbitrate.

As a derivative claim, the claim against the Union, if successful, would have the effect of modifying the award for the company's breach of the collective bargaining agreement to include damages against the Local. Accordingly, New Jersey's three-month statute of limitations for modification of an arbitration award, the statutory reference which I have already given, is applicable by analogy.

Since the arbitration award was decided on August 8, 1978, the applicable

period of limitation had run over two years before plaintiff filed the suit.

Plaintiff's second claim against the Local that it failed to enforce the arbitration award is also governed by that three-month statute, in my judgment. The effect of success on this claim would be analogous to confirmation of the award.

If indeed Local breached its duty of fair representation by failing to enforce the award, it would be liable for the loss caused by that breach, namely, the equivalent of what was awarded.

Of course, the limitation period would not run from the date of the award in this instance, but from the date of the breach. In this instance, giving the plaintiff every favorable inference, I find that the breach took place no later than December 4, 1978, when William Backham wrote to plaintiff's counsel and

told him unequivocally that the Pension Board had denied retroactive pension credits and that the "union had gone its last mile." At this point it was clear that the three-month period for confirming the award had expired, that the Pension Board decided to reject the award and that the Union was not going to do anything about it.

Plaintiff argues, however, that Mitchell should not be given retroactive effect to his claims against the Local. He argues that the factors set out in Chevron Oil v. Hudson, 404 U.S. 97 (1971) require that Mitchell as it applies to claims against unions be given only prospective effect. I disagree.

In Chevron Oil, the Supreme Court set out three factors:

(1) The decision must establish a new principle of law either by overruling

clear past precedent on which litigants may have relied, or by deciding an issue of first impression whose resolution was not foreshadowed;

(2) The purpose of the rule must be examined to determine whether retrospective application will further or retard its operation; and

(3) The inequity produced by retrospective operation must be waived.

In my judgment, the first factor weighs in favor of retroactive application. Mitchell did not establish a new principle of law. It simply clarified on old one. In 1966, under Hoosier Cardinal Corporation, 383 U.S. 696 (1966), courts were directed to look to the appropriate state statute of limitations, keeping in mind that the goal of federal labor law was the rapid disposition of

labor disputes. See page 707 of that opinion.

In the Third Circuit there was no definitive decision on which state statutes of limitation was appropriate until Liotta. Plaintiff argues that Falsetti v. Local Union No. 2026, UMW, 355 F.2d 658 (3rd Cir. 1966) was precedent for applying a state's contract statute of limitations. In fact, the Falsetti court did not reach the issue because the plaintiff's claim failed even under the six-year state statute. Moreover, the Falsetti court suggested that six years might be unduly long for a labor case. The court stated:

"It may well be, however, that at least in a case such as this, where the facts were susceptible of triggering National Labor Relations Board action on unfair labor practice grounds, that the

state statute of limitations would cause undesirably lingering litigation in light of the six-months federal statute of limitations governing unfair labor practices." See page 662 of Falsetti.

Although several district courts in the Third Circuit did use the contract statute of limitations for such cases, district courts in other circuits were using the shorter statutes of limitation applicable to review of arbitration awards. See, for example, Barbarino v. Anchor Motor Freight, Inc., 421 F. Supp. (W.D.N.Y. 1976).

Thus, in the absence of a definitive ruling by the Third Circuit or Supreme Court, there was no clear precedent on which the plaintiff may have relied. Moreover, the analysis in Barbarino foreshadowed the Supreme Court's decision in Mitchell.

The second factor also weighs in favor of retroactive application. General federal policy favors arbitration as a means of resolving labor disputes. United Steel Workers of America v. Warrior and Gulf Navigation Company, 363 U.S. 574, 578 (1960). Federal law policy also favors rapid resolution of labor disputes. Hoosier Cardinal Company, cited supra. Retroactive application of Mitchell serves both of these policies. At first glance, the third factor in equity weighs in favor of prospective application. However, I note that the plaintiffs in both Mitchell and Liotta were barred by the new application of the shorter statutes of limitation. Mr. Taylor faces no greater inequity than they did.

In sum, then, I find that the Chevron Oil factors weigh in favor of retrospective application of Mitchell and

Liotta. Application of Mitchell and Liotta principles requires, in my judgment, a finding that the 90-day limitation of N.J.S.A. 2A:24-7 applies to the plaintiff's claims against the Union.

However, plaintiff also argues that Defendant Local should be estopped from asserting the statute of limitations as a defense because it misled plaintiff into believing that it would confirm plaintiff's right to the award.

Plaintiff argues that he was lulled into relying on the local until time had run out. Plaintiff thus was unable to file his own action to confirm or otherwise participate in reopening the arbitration.

This argument is irrelevant in light of my determination that the limitation period on plaintiff's claim against the Local did not begin running until the

Local had allegedly breached its duty by allowing the limitation period on confirming awards to run, informing the plaintiff that the pension board had repudiated the award and telling plaintiff that the union would do nothing further about it.

Plaintiff was so informed by letter to his attorney on December 4, 1978, after each of the actions occurred that plaintiff claims misled him.

Since the statute of limitations did not begin running until <u>after</u> plaintiff was informed that the union had not confirmed the award, the union cannot be estopped from asserting the defense.

In sum, I have determined that plaintiff's claims against the Local are governed by the three-month statute, N.J.S.A. 2A:24-7.

Since plaintiff did not file suit until November 19, 1980, over 21 months after the applicable period had run, summary judgment is appropriate and I will grant defendant's motion.

This disposition makes it unnecessary to consider plaintiff's cross motion, and it is therefore denied.

Mr. Lehrecke, I would ask you to draw an appropriate order in conformance with my determination this afternoon.

MR. LEHRECKE: Your Honor, I understand that Mr. Klausner will appeal this judgment.

THE COURT: So what?

MR. LEHRECKE: I would anticipate that the Third Circuit, if he does appeal it, would affirm. However, we made a motion to enlarge the period of discovery so that we coulddepose the plaintiff. It was unopposed. Would it be appropriate to

get, in case it is remanded, now or later--

THE COURT: The case is over.

MR. LEHRECKE: Oh, okay.

THE COURT: If you want a winner--

MR. LEHRECKE: Take it.

THE COURT: It is an exercise in futility, and if the case is reversed, then Mr. Klausner is back in the ballpark.

Mr. Klausner, good afternoon, sir.

MR. LEHRECKE: Thank you, Judge.

UNITED STATES DISTRICT COURT
THE DISTRICT OF NEW JERSEY

GRANVILLE B. TAYLOR, JR.,	:	HONORABLE HAROLD A.
Plaintiff,	:	ACKERMAN
-vs-	:	CIVIL ACTION No. 80-3774
U.A.W. LOCAL 980,	:	
Defendant.	:	

ORDER GRANTING SUMMARY JUDGMENT

This matter having been opened to the Court by Giblin & Giblin, Esqs., attorneys for the defendant, U.A.W. Local 980, (David Lehrecke, Esq., appearing) on notice to Klausner & Hunter, Esqs., attorneys for the plaintiff, Granville B. Taylor, Jr., (Stephen E. Klausner, Esq., appearing) on application for an Order of Summary Judgment in favor of the defendants and against the plaintiffs as to all counts, and the Court having considered the memoranda of Law submitted by the

parties and having heard the arguments of counsel and having stated its findings of fact and conclusions of law on the record, it is, on this 15th day of March, 1982, ORDERED that judgment be and the same hereby is granted in favor of defendant, U.A.W. Local 980, and against the plaintiff, Granville B. Taylor, Jr., and the Complaint be, and the same hereby is, dismissed with prejudice and without costs. This ruling is made pursuant to Rule 56(b) of the Federal Rules of Civil Procedure.

HAROLD A. ACKERMAN, U.S.D.J.

APPENDIX G

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

GRANVILLE B. TAYLOR, JR.,	:	
	:	
Plaintiff	:	CIVIL ACTION
	:	NO. 80-3774
vs.	:	
	:	
FORD MOTOR COMPANY, and LOCAL UNION 980, UAW (UNITED AUTOMOBILE, AEROSPACE & AGRICULTURE IMPLEMENT WORKERS OF AMERICA),	:	COMPLAINT
	:	
Defendants.	:	

Plaintiff, Granville B. Taylor, Jr., complaining of the defendants, Ford Motor Company and Local Union 980, UAW (United Automobile Aerospace & Agriculture implement Workers of America), by his attorney, Stephen E. Klausner, alleges:

1. Plaintiff, Granville B. Taylor, Jr., (hereinafter referred to as

"Plaintiff") is an individual, residing at R.D. #1, Deans Lane, Box #1657, Monmouth Junction, New Jersey.

2. Defendant, Ford Motor Company, is upon information and belief, a Michigan corporation and is authorized to do business in this state. Said defendant, an automobile and truck manufacturing company, with a principal office at P.O. Box F, Edison, New Jersey 08817, at all pertinent times has been engaged in interstate commerce.

3. Defendant company, at all times mentioned herein, was an employer in an industry affecting interstate commerce, as defined by Sections 501(1) and (3) and 2(2) of the Labor Management Relations Act (29 U.S.C.§ §142(1) and (3) and 1529(2), (hereinafter referred to as LMRA) and within the meaning of Section 301 of said act (29 U.S.C. §185). Jurisdiction of

this Court in invoked pursuant to said sections.

4. Plaintiff was employed by defendant company as a Pumpman at the time that he was laid off from his classification effective March 11, 1969.

5. Defendant, Local #980, United Auto Workers, a labor organization (hereinafter referred to as "Defendant Union") was at all times hereinafter mentioned, a labor organization representing employees in an industry affecting commerce as defined in Sections 501(1) and (3) and 2(5) of the LMRA (29 U.S.C.) §§ 142(1) and (3) and 152(5) and within the meaning of Section 301 of said Act (29 U.S.C. §185. Defendant union maintained its principal office at 27 Melville Road, Edison, New Jersey 08817.

6. At all times hereinafter mentioned, Defendant Union, was the

certified collective bargaining representative of a bargaining unit consisting of non-supervisory personnel, including Pumpman as set forth in Article I (recognition) of the Contract between the parties. A copy of the Recognition clause is attached hereto as Exhibit "A".

7. On or about October 31, 1973, defendant's herein entered into a collective bargaining agreement covering all employees in the bargaining unit which was in full force and effect when the plaintiff was laid off.

8. Article VIII, Section 16-18 of the aforementioned agreement relates to reductions in force procedures, i.e. lay off procedures, and are germane to the instant action. A copy of these sections is appended hereto as Exhibit "B".

9. Pursuant to Article VIII, Section 18, plaintiff should have recieved notificatien from the defendant company and/or defendant union in May, 1973 that a vacancy had occurred in the Pumpman classification. Plaintiff was not notified either in writing or orally by defendant union or defendant company that a vacancy had occurred in May, 1973, concerning the Pumpman classification.

10. The vacancy referred to in paragraph 9 was filled by another employee by way of a promotional posting on May 29, 1973. Pursuant to Article VIII, Section 18, Plaintiff should have filled that vacancy upon notification and acceptances.

11. On May 7, 1976, the defendant company received a certified letter from the plaintiff where he questioned his employment status. It was determined upon investigation that the plaintiff should be

reinstated in his former classification. Accordingly, the plaintiff was notified to report for reinstatement effective July 1, 1976.

12. Plaintiff was finally reinstated to his former classification of June 28, 1976, three years after said plaintiff should have been reinstated to that position in accordance with the operative bargaining agreement.

13. A grievance was filed on behalf of the plaintiff on or about June 29, 1976, citing a violation of his recall rights pursuant to Article VIII, Section 18 of the bargaining agreement. This grievance was submitted to the company on July 12, 1976, and was ultimately submitted to arbitration.

14. On August 8, 1978, Umpire Paul D. Hanlon issued an arbitration award concerning the plaintiff's grievance (Case

#39017 - Appeal # A-107331) that in pertinent part, determined that Article VIII, Section 18 had been violated when the plaintiff had not been recalled in May 9, 1973. Although the Umpire held that Article VII, Section 24(a) of the aforementioned agreement limited retroactivity in back wage claims involving company errors concerning recall right, the Umpire ruled that plaintiff should receive pension rights and benefits for the period from May 29, 1973 to June 28, 1976. A copy of the Hanlon award is attached hereto as Exhibit "C".

15. The case cited by Umpire Hanlon (Decision No. M-1409) to buttress his conclusion concerning the limiting of retroactivity in back wage claims involving recall procedures related to a situation where the aggrieved employees were in fact sent recall notices. Recall

notices in the instant matter were never sent to plaintiff Taylor by the defendant company nor was he so notified by the defendant union which was in possession of pertinent seniority lists and responsible for the administration of the pertinent collective bargaining agreement. The case cited by Umpire Hanlon in attached hereto as Exhibit "D".

16. In a letter dated September 18, 1978, plaintiff requested that the defendant company forward to him a check for the full amount of benefits awarded to him in the Umpire's award. He also requested that the proper reinstatement of pension rights granted by the Umpire be validated in writing.

17. The defendant company in a letter dated September 18, 1978, advised plaintiff that there was no provision in the Umpire's decision for a monetary award

as compensation for lost benefits. It was stated that the issue of pension rights had been proposed to the Retirement Board.

18. In corrrespondence dated September 29, 1978, the then attorney for the plaintiff requested that the defendant union take all action necessary to clarify what was intended by the Umpire's reference to "pension rights and benefits for the period from May 29, 1973 to June 28, 1976". Attached hereto as Exhibit "E" is a copy of a sheet prepared by plaintiff delineating what he preceived to be a list of "benefits" that were denied him, apart from his weekly compensation. It was suggested among other alternatives that the defendant union seek clarification from the Umpire and/or seek to confirm the arbitration award to preserve plaintiff's other legal options.

19. In a letter dated November 30, 1978, an International Representative of the U.A.W., Leo Caulford informed the Plaintiff that he was not entitled to holiday and vacation pay and asserted the U.A.W./Ford Retirement Board had denied him pension credits notwithstanding Umpire Hanlon's decision.

20 In a letter dated November 21, 1978, the then attorney for the plaintiff requested that the President of Local 980 utilize whatever internal union proceedures that were available to protect the Plaintiff's rights inasmuch as the Local was in substantial part responsible for his failure to be recalled in May, 1973.

21. On December 4, 1978, the Administrative Assistant to the President of the U.A.W., William Beckham stated in pertinent part that since the Union had

taken the instant matter to arbitration it "had gone its last mile, and there would be no further action that could be taken on the matter within the Union."

22. On January 8, 1979, Plaintiff filed a Notice of Appeal with the Public Review Board (hereinafter referred to as "PRB") of the International Union U.A.W. which raised the issue of defendant Union's negligence in failing to fairly represent him by not notifying him or the company by letter of his recall rights in May of 1973.

23. On February 7, 1979, the Executive President of the Public Review Board, David Y. Klein, signed a notification of Pending Appeal, a copy of which is attached hereto as Exhibit "F" in part requiring the International Union (U.A.W.) to file a written statement of

position within fifteen (15) days of receipt of the notification.

24. On February 19, 1979, Mr. Klein granted the International Union an extension of time till March 5, 1979 to file its positional statement with the Public Review Board.

25. On April 19, 1979, approximately six (6) weeks after the aforementioned response was due, William Beckham of the International Union, U.A.W., stated in part the following:

> "With regard to Public Review Board Case #478, which the Board had numbered, this is really not an appropriate case before the Board, in that if you will recall, it is a legally prepared document requesting damages which are alleged to have been suffered as a result of negligence on a matter which the Union had had processed up to and including arbitration, which we concluded was not appropriate for the procedure, or left us confused."

26. The appeal of Plaintiff Taylor to the Public Review Board was thereafter

submitted to the Public Review Board for procedural advise.

27. In correspondent dated June 14, the PRB remanded the Taylor appeal to the International Executive Board for determination of the following issues:

(a) Did appellant present a claim for relief to Local Union 980;

(b) If appellant did present a claim to Local 980, was the claim timely pursuant to requirements of Article 33, §2 of the Constitution;

(c) If the answers to questions one and two are each affirmative, did appellant take a timely appeal to the International Executive Board pursuant to the requirements of Article 33, §6 of the Constitution;

(d) If a timely appeal was submitted to the International Executive Board, did the International Executive

Board determine whether Local #980 properly represent and protect the interest and rights of appellant, Granville B. Taylor, Jr. If so, please advise us to the results of the International Executive Board's decision.

28. On October 20, 1980, approximately sixteen months after it was directed to answer the four questions referred to in paragraph 27, the President of the International Union, UAW prepared a reply which is attached hereto as Exhibit "G". In pertinent part it was suggested that Plaintiff's appeal would not appear to be an issue within the PRB's jurisdiction.

29. In calendar year 1980, the administration of Local #980 was taken over by the International Union, U.A.W. A flyer attached hereto, made a part hereof and marked as Exhibit "H", prepared by the

International Union representatives, was sent to all members of defendant union and in part stated that the International Union has taken over the Local because of many written complaints concerning constitutional, contractual and financial violations perpetrated by the Local against the membership which were established and proven by the International Union, UAW. One illustration of the Local's misconduct referred to failure to administer the contract's seniority provisions in the event of a layoff, a failing that is at issue in the instant proceeding.

30. Plaintiff alleges that defendant Union in breach of its statutory duty to fairly represent plaintiff as required by the LMRA was grossly negligent in failing to administer the collective bargaining agreement between the defendant company

and the defendant Union, i.e. by its failure to monitor relevant seniority lists in its possession and its failure to notify Plaintiff of the Pumpman vacancy pursuant to Article VIII, Section 18. Moreover, the Defendant Union breached its statutory duty to fairly represent the plaintiff as required by the LMRA by perfunctorily processing plaintiff's grievance through arbitration failing to seek enforcement of the arbitration award or a clarification of said award, and refusing to actively participate in the Public Review Board's "investigation" of Local 980's conduct.

31. Plaintiff further alleges that defendant company illegally breached its contractual obligation pursuant to Article VIII, Section 18, when it failed to give notice to Plaintiff of the Pumpman vacancy in May, 1973. Moreover, the Plaintiff

alleges that the Company never complied with that portion of the Hanlon award which stated that the Plaintiff should receive "pension rights and benefits for the period between May 29, 1973 and June 28, 1976.

WHEREFORE, Plaintiff prays:

(a) That this court determine that the defendant company illegally breached its contractual obligation pursuant to Article VIII, Section 18 of the "1973 agreement" when it failed to give notice to the plaintiff of the Pumpman vacancy in May, 1973, and that defendant union breached its duty of fair representation owing to the plaintiff by its gross negligence in failing to properly administer the collective bargaining agreement between the defendant company and the defendant union and by its subsequent refusal to represent plaintiff

by failing to seek enforcement of the relevant arbitration award or a clarification of said award;

(b) That this court award plaintiff damages against both defendants, or in such proportion between them as this court may determine to be just and proper;

(c) Such other and further relief as this Court deems just and proper, including counsel fees;

KLAUSNER AND HUNTER, ESQUIRES

STEPHEN B. KLAUSNER

APPENDIX H

Solidarity House
8000 E. Jefferson Ave.
Detroit, Michigan 48214

U.A.W. International Union, United
Automobile, Aerospace & Agricultural
Implement Workers of America-UAW

December 4, 1978

Jack Wysoker, Esq.
313 State Street
Perth Amboy, NJ 08861

Dear Mr. Wysoker:

On November 27, 1978 the International Union received a copy of a letter you had submitted to Mr. Guy Wedgeworth, President of Local 980, addressed to the UAW Public Review Board.

You indicate in your letter to him that you were writing on behalf of Mr. Grandville Taylor in order to bring to his attention a complaint he had regarding the failure of Local 980, you state, to represent him adequately when he was laid

off from his classification. You request that you be advised regarding procedures, both Local and International, so that a hearing may be had regarding his complaint.

This letter is to advise you that under the internal structure of our Union, there are no procedures whereby you, as an attorney, may enter, intitiate or process a complaint by and on behalf of a member of our Union as you are normally accustomed under civil judicial proceedings.

Where a member believes he has a valid complaint against a Local Union, or other body within the Union, the procedures established under our Constitution are required to be utilized by him and not through counsel.

In the instant case we note that refer to the complaint as having been

decided by an arbitrator which, if true, means that the case has been processed by the Union up to an including arbitration which is the last resort step for the resolvement of complaints under the Collective Bargaining Agreement.

You may, therefore, advise Mr. Taylor if you are representing him that the Union has gone its last mile, and there would be no further action that could be taken on the matter within the Union.

Very truly yours,

William J. Beckham
Administrative Assistant
to the President
INTERNATIONAL UNION
UAW

WJB/hg
opeiu494

cc: Ken Bannon, Director, UAW Ford Dept.
Edward Gray, Director, Region 9
Guy Wedgeworth, Pres.
John Valek, Sr., Rec. Sec'y
Local 980

APPENDIX I

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 84-5338

GRANVILLE B. TAYLOR, JR., Appellant

vs.

FORD MOTOR COMPANY, and LOCAL UNION 980, UAW (UNITED AUTOMOBILE AEROSPACE & AGRICULTURE IMPLEMENT WORKERS OF AMERICA)

(D.C. Civil No. 80-03774)
ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE -- DISTRICT OF NEW JERSEY - Trenton

Present: HUNTER and HIGGINBOTHAM, Circuit Judges, and KELLY, District Judge*

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the -- District of New Jersey - Trenton and was argued by counsel on January 17, 1985.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court, entered January 25, 1984, be, and made final by the order of April 25, 1984, be, and the same is hereby affirmed. Costs taxed against the appellant.

ATTEST:

Clerk

May 9, 1985

*Hon. James McGirr Kelly, United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

Certified as a true copy and issued in lieu of a formal mandate on June 19, 1985.

Test:

Chief Deputy Clerk, United States Court of Appeals for the Third Circuit.

Costs taxed in favor of Aplee, UAW Local 980 as follows:

Brief.....	$ 35.18

APPENDIX J

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 84-5338

GRANVILLE B. TAYLOR, JR.

Appellant

vs.

FORD MOTOR COMPANY, and LOCAL UNION 980, UAW (UNITED AUTOMOBILE AEROSPACE & AGRICULTURE IMPLEMENT WORKERS OF AMERICA)

SUR PETITION FOR REHEARING

Present: ALDISERT, Chief Judge, SEITZ, ADAMS, GIBBONS, HUNTER, WEIS, GARTH, HIGGINBOTHAM, SLOVITER, BECKER, STAPLETON and MANSMANN, Circuit Judges

The petition for rehearing filed by APPELLANT GRANVILLE B. TAYLOR, JR. in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the

circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is denied.

Judge Gibbons would grant the petition for rehearing.

Judge Higginbotham votes for rehearing en banc for the reasons noted in his dissent.

Judge Becker would have granted rehearing to decide the question whether a hybrid section 301/unfair representation suit to enforce rather than vacate an arbitration award is barred by the NLRA's

six-month limitations period for unfair labor practice claims.

By the Court,

_____

Circuit Judge

Dated: JUNE 11, 1985

Supreme Court, U.S.
FILED
DEC 23 1985
JOSEPH F. SPANIOL, JR.
CLERK

(2)

No. 85-614

IN THE
Supreme Court of the United States
OCTOBER TERM, 1985

GRANVILLE B. TAYLOR, JR.,
Petitioner,

v.

LOCAL 980, UAW (UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA),
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

---

BRIEF IN OPPOSITION FOR UAW LOCAL 980

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COUNTERSTATEMENT OF QUESTION PRESENTED

Ford fails to recall Taylor in seniority order. The UAW grieves, arbitrates, and wins. The labor agreement, however, does not provide for back pay. The arbitrator, from Ford's comments at the hearing, believes there is agreement to award Taylor pension credits, and so directs. The Retirement Board, as fiduciaries of the Plan, refuse the credit. It is contrary to the Plan, and beyond the arbitrator's authority. Ford denies the comment was made. Asked to clarify, the arbitrator explains he was only repeating what he *thought* was an agreement. The UAW refuses to sue. Almost two (2) years later, Taylor brings a hybrid § 301-fair representation act.

Under *DelCostello v. Int'l Bro. Teamsters*, 462 U.S. 151 (1983), does the six-month statute of limitations of § 10(b) of the NLRA apply?

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

No. 85-614

GRANVILLE B. TAYLOR, JR.,
Petitioner,

v.

LOCAL 980, UAW (UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA),
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

---

BRIEF IN OPPOSITION FOR UAW LOCAL 980

Local 980 of the United Automobile, Aerospace and Agricultural Implement Workers of America (UAW),[1] by counsel, respectfully pray that the Court *deny* the Petition for Writ of *Certiorari.*

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[1] Hereafter, the "Local" or "Local 980." The International Union, UAW, the parent organization, actually handled this matter during and after arbitration. Yet, it has *never* been a party to this litigation. Under the Ford-UAW NATIONAL AGREEMENT, the Local's jurisdiction over the grievance ends at Step 3, the *prior* Step. As the disposition below did not reach the merits, this peculiarity has so far escaped notice. Ford Motor Company, although originally a defendant, was granted summary judgment in 1981, and has not been a party since, making the array of parties even stranger.

OPINIONS BELOW

The opinion is reported at: *Taylor v. Ford & UAW Local 980*, 761 F.2d 931 (3d Cir. 1985), *affirming*, —— F.Supp. —— (D. N.J.), unreported, *on remand from*, *Taylor v. Ford & UAW Local 980*, 703 F.2d 738 (3d Cir. 1983), *reversing*, —— F.Supp. —— (D. N.J.), unreported. These decisions are reprinted in the Appendix to the Petition at 1a-83a.

COUNTERSTATEMENT OF THE CASE

Ford Motor Co. laid off Taylor on March 11, 1969, from the pumpman classification at the Metuchen, New Jersey plant. (78a)[2] Ford failed to notify Taylor of a vacancy in May, 1973, and instead filled it through a promotional posting, taken by a less senior worker. (80a)

This was discovered in May, 1976, when Taylor wrote Ford. Ford promptly told Taylor to report for work, and did so on June 28, 1976. (81a)

Taylor grieved this violation of the seniority provisions. Local 980 processed the grievance, and, not prevailing, appealed it to the International Union for possible arbitration. (81a)

On August 8, 1978, the Umpire[3] issued an Award holding Ford had violated the Agreement. Since Article VII § 24(a) of the Agreement specifically prohibits back pay for this sort of recall error, the Umpire could not grant back pay. (82a) However, on the subject of pension credit during the period, the Umpire wrote:

> During the Umpire hearing, the Company agreed that the Aggrieved should be credited with pension rights and benefits for the period from May 29, 1973, to date of reinstatement [June 28, 1976] and *based*

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[2] The Appendix to the Petition will be cited by the page of the Appendix, followed by "a," as "78a."

[3] Under the Ford-UAW NATIONAL AGREEMENT the standing arbitrator is known as the "Umpire." During these events it was Paul Hanlon. (81a-82a)

> *on that agreement*, the Umpire orders that this be done. [emphasis supplied] [4]

Taylor wrote inquiring about his pension benefits under this language. (84a) Ford responded by letter, denying there was any monetary award, and referring the pension issue to the Retirement Board of the Pension Plan.[5]

On October 25, 1978, the Retirement Board, as Plan fiduciaries, unanimously voted to deny Taylor's claim to retroactive credits:

> The Board Members concluded that implementation of the Umpire's decision would require changing the Ford Motor Company-UAW Retirement Plan, which is specifically prohibited under Article VII, Section 3 of the Plan, and further, that the Ford Motor Company-UAW Umpire *does not have jurisdiction over* matters concerning the Retirement Plan. [emphasis supplied] [6]

Mr. Caulford, the responsible International Representative, thereupon wrote the Umpire for clarification.[7] The Umpire responded, confirming Ford's version,[8] and denying any intent to award other benefits.[9]

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[4] The full arbitration decision is reprinted in the Appendix in the Third Circuit, at 17a-18a. It is Exhibit C to the Complaint.

[5] That letter, dated September 27, 1978, is Exhibit F to the Complaint, reproduced at 53a of the Appendix in the Third Circuit.

[6] *Reprinted* at 60a of the Appendix in the Third Circuit.

[7] Letter, Caulford to Hanlon, dated November 30, 1978, *reprinted* at 62a of the Appendix in the Third Circuit.

[8] Mr. Hanlon's letter is *reprinted* at 65a of the Appendix in the Third Circuit, and recited: "Based upon my notes and my recollection, I believe that at the close of the Umpire hearing, Vic Onufrieff [of Ford] stated that it was his understanding that the Aggrieved had already been credited with pension benefits for the relevant period of time, but if he had not been so credited, he would take steps to see that he would be."

[9] *Ibid.*, "There was definitely no intent to award other benefits such as hospital insurance, life insurance, accident and disability insurance and vacation and holiday pay."

On December 4, 1978, the Union wrote Taylor that it would take "no further action" in the matter.[10] Taylor abandoned his efforts at internal appeal, and, on November 9, 1980, "nearly two (2) years later,"[11] filed suit.

ARGUMENT

The Third Circuit characterizes the issue here as whether the six-month § 10(b) limitation from *DelCostello v. Int'l Bro. Teamsters*, 462 U.S. 151 (1983), "applies to a hybrid duty of fair representation-breach of contract action under section 301 . . . where the plaintiff-employee is seeking to enforce, rather than vacate, an arbitrator's decision." 761 F.2d at 932, 2a.

In reality, it's not even *that* interesting. When some care is taken to determine what the Umpire *actually* decided, it turns out that there is nothing for Taylor to be "seeking to enforce." The Umpire, perhaps disliking the contractual limitation on his remedy, picked up Ford's loose comment, and sensing benefit without cost, wrote it into his *dicta*. The UAW pressed into his narrow opening, only to be pointedly told, by the fiduciaries of the Retirement Board: (i) that the Plan granted no such benefit, and (ii) that the Umpire (and, for that matter, Ford's advocate) were beyond their jurisdiction to say otherwise. In this, the Retirement Board did their precise duty.

Recourse to the Umpire only confirmed Ford's, rather than Taylor's and the UAW's position. Since Mr. Hanlon had abandoned his wishful *dicta*, the UAW had no choice but to abandon the argument premised upon it. Taylor still wanted the pension credits, so he sued—a garden-variety hybrid case, attacking the Union's decision. However, he waited almost two years to do so.

This is an isolated, fact-specific case, whose only moral is that both employer advocates and arbitrators should be more circumspect in areas where they have no authority, and less knowledge.

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[10] 3a in the Pet. App., 761 F.2d at 932.

[11] 7a, 761 F.2d at 934, *i.e.*, December 4, 1978 to November 19, 1980, when the Complaint was filed.

It is a fine example of the wisdom of this Court's decisions in *NLRB v. Amax Coal Co.*, 453 U.S. 322 (1981), and *Schneider Moving & Storage Co. v. Robbins*, —— U.S. —— (1984), 104 S.Ct. 1844, 80 L.Ed. 2d 447. Those cases, in confirming the independent responsibilities of Plan fiduciaries, tell us exactly why the Umpire should have known better. To his credit, he saw his error.

Seen against *Amax Coal* and *Robbins*, Taylor's complaint amounts to only a pedestrian, hybrid, fair-representation case, contesting the UAW's abandonment of a lost cause. As such, it falls easily within the purpose and policies of *DelCostello*.

There is no serious split of the Circuits. The Court below, 5a note 2, 761 F.2d at 933 n. 2, is correct in distinguishing *Derwin v. Gen. Dynamics Corp.*, 719 F.2d 484 (1st Cir. 1982), and *IUE v. Ingram Mfg. Co.*, 715 F.2d 886 (5th Cir. 1983), *cert. denied*, —— U.S. —— (1984), 104 S.Ct. 1711, 80 L.Ed 2d 184. Those cases involve the Union's agreement with the employee, and suit against the Company to enforce the arbitration award. Here, the UAW disagreed with Taylor, and refused to sue Ford.

Had the UAW decided to sue, *UAW v. Hoosier Cardinal Corp.*, 383 U.S. 696 (1966), would have given us a longer statute of limitations. But the UAW did not.[12] We have here not the Union's suit against the Company on the award; but an employee's hybrid suit against the Union's decision. As such it is controlled by *DelCostello*, as this Court below correctly held.

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[12] Had Taylor, as a Plan participant, sued the Retirement Plan *itself*, under § 502(a)(1)(B) of ERISA, 29 U.S.C. § 1132(a)(1)(B), he might also have benefited by the longer statute of § 413, 29 U.S.C. § 1113. On the Plan's status as the entity to be sued for a benefit entitlement, *see* § 502(d), 29 U.S.C. § 1132(d). For some reason unknown to us, Taylor never sued ERISA. The Petition, at 19, frankly admits that the pension credits are the only remedy at issue here.

The "retroactivity" of *DelCostello* has been the subject of much followup litigation in the Circuits, as this Court knows. We need not repeat the citations here.[13] There is no particular disagreement on this issue. Because of this, and because the issue will shortly pass from our jurisprudence, there is no need for the Court to resurrect it.

CONCLUSION

This case is fact-specific, atypical, and correctly decided. There is no split in the Circuits, and the retroactivity issue is transitional. For these reasons, the Court should *deny* the Petition.

Respectfully submitted,

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Counsel for UAW Local 980

December 26, 1985

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[13] They are recited in the Petition, at 40-42.